

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-002630-MR

ROBBIE CLARK

APPELLANT

v. APPEAL FROM MARSHALL CIRCUIT COURT  
HONORABLE DENNIS R. FOUST, JUDGE  
ACTION NO. 02-CR-00077

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, TACKETT, and VANMETER, Judges.

COMBS, JUDGE. Robbie L. Clark has appealed from a final judgment of the Marshall Circuit Court entered on December 18, 2002, which sentenced him to five-years' imprisonment. Clark had entered conditional guilty pleas to charges of failing to register as a sex offender and of being a persistent felony offender in the second degree (PFO II). As we conclude that the trial court did not err by denying Brown's motion to dismiss the PFO II charge, we affirm.

In 1998, Clark was convicted by a McCracken Circuit Court of four counts of use of a minor in a sexual performance, one count of first-degree sodomy, and one count of first-degree sexual abuse. He was sentenced to five-years' imprisonment. After his release from prison, Clark registered in Livingston County as a sex offender pursuant to Kentucky's sex offender registry statute (KRS<sup>1</sup> 17.510) -- commonly known as Megan's Law.

According to information obtained by the Kentucky State Police, Clark moved to Marshall County with his girlfriend and her three children in May 2002. He failed to register as a sex offender in Marshall County or to notify probation and parole of his address change. He was arrested and indicted for failure to register as a sex offender and for being a persistent felony offender in the second degree.

Clark moved to dismiss the PFO II charge, arguing that conviction under the PFO statute would amount to an impermissible double enhancement of his punishment. Following a hearing, the trial court refused to dismiss the charge. Pursuant to a plea agreement with the Commonwealth, Clark entered his conditional plea of guilty to the charges, and the trial court sentenced him to five-years' imprisonment. This appeal followed.

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<sup>1</sup> Kentucky Revised Statutes.

Clark acknowledges that his duty to register as a sex offender arose as a consequence of his McCracken County convictions and concedes his guilt for having failed knowingly to comply with the registry requirements. However, he presents an argument of first impression as to the Megan's Law requirements, contending that the PFO II charge constitutes an impermissible attempt at double enhancement of his punishment for the McCracken County convictions. We disagree.

Clark's 1998 felony convictions in McCracken Circuit Court classified him as a sex offender. He was then indicted for knowingly failing to register as a sex offender under KRS 17.510. Clark's six prior sex offenses -- along with the immediate offense of failing to register -- involve separate and distinct acts. They constitute separate felonies. It was the fact of Clark's conviction of these several separate felonies which subjected him to the PFO statute, a sentence enhancement provision generally applied without regard to the nature or elements of the particular underlying felonies.

The prohibition against what has been dubbed "double enhancement" protects against the imposition of more than one punishment for the same act. In this case, Clark was punished separately for separate acts. He was punished for his sex offenses, including use of a minor in a sexual performance, sodomy, and sexual assault; he then was punished for failure to

register as a prior sex offender with respect to another set of sex offenses. His punishment was enhanced solely because of the commission of separate but multiple felonies within a specific period of time. Thus, the prohibition against multiple punishments for the same offense has not been offended. Application of the PFO statute was appropriate here and did constitute an impermissible double enhancement of Clark's former felony convictions.

Consequently, the judgment of the Marshall Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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