

RENDERED: AUGUST 25, 2006; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-002549-MR

DAN REDDING, SR.

APPELLANT

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE EDDY COLEMAN, JUDGE
ACTION NO. 04-CR-00123

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ABRAMSON AND BARBER, JUDGES; EMBERTON,¹ SENIOR JUDGE.

BARBER, JUDGE: Appellant, Dan Redding, Sr., appeals a judgment by the Pike Circuit Court finding that he failed to register as a sex offender and sentencing him to serve five years. The Pike Circuit Court judgment is affirmed.

Redding was convicted as a sex offender by an out-of-state court. Redding was also convicted as a sex offender in

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

the Commonwealth of Kentucky. Redding is subject to sex offender registration requirements in Kentucky and to additional terms and conditions limiting his contact with minors. Redding had an approved and registered residence. He left that residence for a number of consecutive days to visit with his girlfriend who lived within 1000 yards of a school. Existing statutes and the terms of Redding's probation do not permit him to reside that close to a school.

Redding contends that the statute under which he was charged, KRS 17.510, should be found void for vagueness as to the definition of "residence" and on the basis of Equal Protection under the Fourteenth Amendment to the United States Constitution and Sections Two and Three of the Kentucky Constitution. Redding claims that he was visiting a friend at the new address for approximately two weeks, and that he had no duty to register as a sex offender at that address. He argues that because he had a primary residence, he did not have a duty to notify his probation officer when he stayed for extended periods of time with his girlfriend.

Redding charges that KRS 17.510 should be held void for vagueness for failing to define "residence" for persons living in Kentucky. The Kentucky Supreme Court has discussed the applicable definitions of residence:

Kentucky case law has previously defined residence as a "factual place of abode or living in a particular locality." Old Reliable Insurance Co. v. Brown, 558 S.W.2d 190 (Ky.App. 1977). Typically, where an individual resides is a question of fact for the jury, however, as this Court stated in Young v. Commonwealth, 50 S.W.3d 148, 167 (Ky. 2001):

[W]hen the determination [of admissibility] depends upon the resolution of a preliminary question of fact, the resolution is determined by the trial judge under KRE 104(a) on the basis of a preponderance of the evidence, Bourjaily v. United States, 483 U.S. 171, 175, 107 S.Ct. 2775, 2778-79, 97 L.Ed.2d 144 (1987); and the resolution will not be overturned unless clearly erroneous, i.e., unless unsupported by substantial evidence.

There is some dispute whether Richmond lived in various other places while he was playing music throughout Kentucky and Tennessee. However, it is clear that when he was in the Pulaski County area, he lived in Appellant's home and kept his belongings there. Based on the record, we cannot say that the trial court's decision regarding Richmond's residency was clearly erroneous. Lynch v. Commonwealth, 74 S.W.3d 711, 713 (Ky. 2002).

This Court takes note of the Commonwealth's argument that Redding's parole officer had informed him prior to his extended visit to his girlfriend's residence that he was not allowed to live at that residence due to its proximity to young children. Redding's attempt to get around the intent and spirit of the registration laws by "visiting" at a prohibited address

rather than registering that address as his residence is not well taken.

Redding claims that the statute improperly differentiates between in-state and out-of-state conviction as a sex offender. Redding registered as a sex offender living in Pike County. He spent approximately two consecutive weeks, between April 23 and May 4, staying in the home of his girlfriend. Her home was two blocks from his residence. He argues that he was merely visiting her, not residing at her home. His parole officer took issue with that assertion and classified the visit as a change of residence. Redding contends that the record supported a finding that he still lived at his residence, rather than with his girlfriend. He pointed to evidence showing that he was still paying rent on his old residence, still had his belongings at his old residence, and still received mail at the old residence. An individual may have several residences. Pinkston v. Teletronics, Inc., 4 S.W.3d 130,132 (Ky. 1999); Johnson v. Commonwealth, 90 S.W.3d 39, 43 (Ky. 2002). Both addresses could be considered residences of Redding, as he had belongings at one, and was living for a period of time at the other. Redding had a duty to inform the probation officer that he was staying at that address.

Redding argues that KRS 17.510 subsections (3) and (7) provide, at a minimum, a "grace period" of fourteen days prior to a registration requirement after a change of residence for an out-of-state registrant. He asserts that it is improper that individuals with out-of-state convictions are given fourteen days before they have to register a change of address, under KRS 17.510(7), but that those with in-state convictions are not given a set period of time in which to register. Redding contends that pursuant to KRS 17.510(10) a change of residence is defined for those with out-of-state convictions, but not for those with in-state convictions. He argues the statute is unclear whether he had to register his girlfriend's address as a change of residence when he visited her. He asserts that the statute should provide a set time, or number of days away from the regular residence, before a sex offender is required to register a change of address.

The Commonwealth contends that KRS 7.510(10) requires an in-state registrant to provide notification of a change of address before the date of the change, for changes within a county, and no more than five days if the move is outside the county. They further argue that subsection (6) provides that registrants coming in from out-of-state must register upon relocation, but does not provide a specific time frame for that registration to take place. The subsection (7) upon which

Redding relies, merely lists fourteen consecutive days or thirty aggregate days as the time an out-of-state registrant must spend in Kentucky for the registration requirement to take effect. We are persuaded that the statute is sufficiently clear in notifying defendants when they must register a new residence or change of address.

Lastly, Redding argues that his conviction should be reversed because improper statements by potential jurors tainted the jury panel. Redding cites statements made by potential jurors during voir dire as being prejudicial. The prosecutor asked the juror if there was a period of time during which it would be alright not to know where a convicted sex offender is located:

Prosecutor: What you think [juror]? Would it be alright? Any period of time?

Juror: I believe you ought to know where he is all the time.

Prosecutor: And again, why would that be?

Juror: Cause he's a sex offender.

Prosecutor: For safety reasons?

Juror: Exactly.

The prosecutor then asked the panel of prospective jurors if there was a valid reason for knowing where a sex offender was at all times. He asked "anyone at all that would need to respond to that?" A juror responded:

I believe if the party or the plaintiff has been proven without a shadow of a doubt guilty of a sex offense that he definitely needs some - type of provision, somebody watching over him for a period of time. In my heart, absolutely, I feel that for the sake of children, for the sake of society, because he just - you know - at that point he is - a menace to society.

During questioning by defense counsel, one of the jurors admitted that he would have a hard time being unbiased, knowing that Redding was a convicted sex offender. A second juror stated that she would "probably, more than likely, sentence him no matter what." Both those jurors were excused for cause. Redding claims that excusing those particular jurors did not remove the taint of bias from the entire group of prospective jurors.

A defendant must show actual or implied prejudice which tainted the jury pool. Shegog v. Commonwealth, 142 S.W.3d 101, 110 (Ky. 2004). Redding did not meet that requirement. While the jurors' statements did provide justification for striking those particular members, the statements do not absolutely require reversible error, particularly where no contemporaneous objection was made. A trial court must exercise discretion in determining improper tainting of a panel of prospective jurors. Maxie v. Commonwealth, 82 S.W.3d 860, 862

(Ky. 2002). Redding has failed to show abuse of discretion sufficient to require reversal of the sentence below.

Redding claims error in the trial court's denial to grant a motion for a special verdict form. Defense counsel requested a verdict form requiring the jury to make a specific finding that Redding had established a new residence. The trial court denied the motion. The Commonwealth argues that "everyone" knows what residence means, and that a specific verdict form would have limited counsel's ability to define that term during closing arguments.

The Kentucky Supreme Court has held:

"[W]e reiterate our belief that, unless directed otherwise by statute, court rule, or precedent, trial courts should utilize jury instructions which call for special verdicts only sparingly and upon careful consideration of the defendant's due process rights." Durham v. Commonwealth, 57 S.W.3d 829, 837 (Ky. 2001).

Residence, as used in the statute, is a term which should be understood by all. Counsel discussed residence at length in the closing arguments. No reversible error has been shown.

For the foregoing reasons we affirm the conviction and sentence.

EMBERTON, SENIOR JUDGE, CONCURS.

ABRAMSON, JUDGE, CONCURS IN RESULT ONLY.

BRIEFS FOR APPELLANT:

Lisa Bridges Clare
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Tami Allen Stetler
Assistant Attorney General
Frankfort, Kentucky