

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000567-MR

M.A.S.

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE GREGORY M. BARTLETT, JUDGE
ACTION NO. 02-CR-00491

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER AND McANULTY, JUDGES; POTTER, SENIOR JUDGE.¹

BARBER, JUDGE: Appellant M.A.S. appeals a requirement in his judgment of conviction requiring him to register as a sex offender, pursuant to KRS 17.510. We affirm the ruling of the Kenton Circuit Court.

The law imposes lifetime registration requirements for sex offenders who had a prior conviction, or whose victims were minors. KRS 17.510. A criminal offense against a minor

¹ Senior Judge John W. Potter, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

includes the type of offenses with which M.A.S. was previously charged. KRS 17.520(2)(a)(3). This registration requirement is not a punishment for the offender, but rather a means of protecting the public. Hyatt v. Commonwealth, 72 S.W.3d 566, 569 (Ky. 2002).

M.A.S. admits that prior to his Kentucky conviction he had three counts of sexual battery against him in the state of Ohio. M.A.S. argues that those counts were part of a continuing course of conduct resulting in his Kentucky conviction, and should not count as a conviction for a prior sexual offense. M.A.S. contends that "nowhere in the record on appeal does there appear any evidence that the offense for which Appellant was being sentence [sic] occurred after a prior conviction for a sexual offense, or an offense with a minor victim."

M.A.S. attaches an exhibit from the Ohio case against him in the Appendix to Appellant's Brief. This document contains a listing of offenses relevant to M.A.S.'s conviction. The document shows that he was involved in multiple sexual offenses with a minor child in Ohio beginning in July, 1992, and ending in Kentucky in 2000. The minor child was 13 at the time of the first offense, and 15 at the time of the final offense. The child was the step-daughter of M.A.S. This documentary evidence is attached to M.A.S.'s brief and the conduct detailed therein is not denied by M.A.S. Although this evidence was not

presented in the form of a copy of the sentence against M.A.S., we find that the only remedy would be remanding the case for re-sentencing, at which time the Ohio sentence would be provided, and the same judgment entered. For that reason, we hold the error complained of to be harmless, in accordance with RCr 9.24. See: Maxie v. Commonwealth, 82 S.W.3d 860, 863 (Ky. 2002), applying a similar rationale.

The pre-sentence evaluation shows that M.A.S. pled guilty to the charges of sodomy in the third degree in Kentucky, for an offense occurring in 2000. M.A.S. does not contend that his plea was not freely, voluntarily and knowingly entered. The trial court's judgment refers to a pre-sentence evaluation and a sex offender risk assessment. The record does not contain any objection to those reports. The court's judgment imposed a sentence, a probationary period, and a registration requirement on M.A.S. in accordance with the evidence before it.

The Commonwealth contends that the record before the trial court supported a finding that M.A.S. had a prior conviction for a sex offense. M.A.S. appears to argue that he engaged in prior sex offenses, but that he was not convicted of those separately from his Kentucky conviction. The pre-sentence evaluation of M.A.S. relates that he was charged with five counts of sexual battery of the minor in Ohio. He pled guilty to three of the five charges in Ohio in 2002, and served several

years. He was on "community control" at the time he pled guilty to the Kentucky offenses. This evidence, though not a copy of a formal sentencing, is made part of the record and supports the imposition of sex offender registration upon M.A.S.

Neither party has provided this Court with a transcript of the hearing before the trial court or the documents introduced in support of the trial court's ruling regarding lifetime sex offender registration. It has long been held that when the complete record is not before the appellate court, that Court "must assume that the omitted record supports the decision of the trial court." Commonwealth v. Thompson, 697 S.W.2d 143, 145 (Ky. 1985). M.A.S. has not shown reversible error in the judgment against him. For the foregoing reasons, we affirm the judgment of the Kenton Circuit Court.

ALL CONCUR.

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