

Commonwealth Of Kentucky

Court Of Appeals

NOS. 1999-CA-002184-MR AND 1999-CA-002488-MR

LOUIS NEFF

APPELLANT

v. APPEAL FROM BARREN CIRCUIT COURT
HONORABLE BENJAMIN L. DICKINSON, JUDGE
ACTION NO. 88-CR-00098

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: BARBER, KNOPF, AND TACKETT, JUDGES.

KNOPF, JUDGE: Louis Neff appeals from the order of the Barren Circuit Court classifying him as a moderate risk sex offender pursuant to KRS 17.570. On October 19, 2000, this Court ordered that Neff's appeal be abated pending a decision by the Kentucky Supreme Court on its grant of discretionary review in three cases, all three of which concerned the constitutionality of the Sexual Offender Registration Act, commonly known as "Megan's Law."¹ Hyatt v. Commonwealth,² which consolidated all three cases and upheld the constitutionality of the Act, is now final.

¹ KRS 17.500 *et seq.*

² Ky., 72 S.W.3d 566 (2002).

Thus, this case is ripe for our review. Based upon the Supreme Court's holding in Hyatt, we affirm the trial court's order.

On February 6, 1989, Neff pleaded guilty to one count of sodomy in the second degree³ and one count of sexual abuse in the first degree⁴ for which he was sentenced to serve seven years in prison. Prior to his anticipated release from prison, a sex offender risk assessment was performed and a hearing date set. Neff's counsel filed motions to remand, challenging the constitutionality of the evaluation and registration requirements, and asserting that the trial court lacked jurisdiction to conduct the hearing. At the hearing conducted on September 20, 1999, no witnesses were called and the only issue raised was whether the statute should apply to Neff since his conviction pre-dated the effective date of the statute. At the conclusion of the hearing, the trial court entered its findings and concluded that Neff posed a moderate risk for re-offending. In accordance with the Sexual Offender Registration Act, the trial court imposed "special conditions" to minimize his risk to the community. In this appeal, Neff does not complain about the process afforded by the trial court nor does he request the matter be remanded for a new hearing. Instead, Neff seeks to have the risk assessment order vacated or alternatively, the "special conditions" imposed by the trial court removed.

Neff contends that the trial court's application of KRS 17.500 *et seq.* violates several of his constitutional rights

³ KRS 510.070.

⁴ KRS 510.110.

based on the following arguments: (1) it violates the federal and state prohibitions against *ex post facto* laws and the constitutional provisions concerning double jeopardy; (2) the statutory scheme violates the separation of powers doctrine; (3) the trial court lacked jurisdiction to hold the assessment hearing; and (4) the legislature did not intend retroactive application of the statute. These arguments were all specifically considered and rejected by the Supreme Court in Hyatt, supra. The trial court did not err, therefore, in its application of the Sex Offender Registration Act on these particular grounds alleged in this appeal.

Neff also argues that the trial court did not have authority to impose special conditions upon him in addition to the registration requirement. Neff asks this Court to reverse the Order of the Barren Circuit Court with instructions to remove the special conditions set forth in that order. The special conditions imposed were as follows:

- a. Participate in a follow-up program designed for persons who have successfully completed the core requirements of an approved sex offender treatment program.
- b. Have no contact with the victims of his offense and no unsupervised contact with any males under the age of 18 except with the written consent of his therapist and with the supervision of an adult chaperone who is fully informed of his offenses and behavioral rules.
- c. Lead an alcohol and drug-free lifestyle, attending from one to three AA meetings weekly, attaining a sponsor, and completing the 12-step program.
- d. Assume financial responsibility for any treatment required by himself or by any victims of his offenses.
- e. Submit to periodic polygraph examinations as directed by his therapist.

As an initial matter, we find that Neff failed to preserve his objection to the imposition of any of these conditions. During the hearing on September 20, 1999, Neff's counsel questioned whether the periodic polygraph examination requirement would "stand up on appeal." However, counsel did not specifically object to the condition. Furthermore, he conceded that if the Act could be constitutionally applied to Neff, then the other conditions would likely be valid. We find that counsel's statements to the court were insufficient to preserve an objection to any of the conditions.

Moreover, Neff's complaint about the conditions of his release does not rise to the level of palpable error. The Sex Offender Risk Assessment Advisory Board is authorized to recommend conditions of release which minimize risk.⁵ Both the parole board and the trial court may impose conditions on parole or other forms of conditional discharge.⁶ Of the conditions imposed by the trial court, only the requirement that Neff submit to "periodic polygraph examinations as directed by his therapist" seems unusual. Nevertheless, this condition was not clearly outside of the trial court's authority to impose. In the absence of a more specific objection, we find that Neff's substantial

⁵ KRS 17.554(2)(c)-(d).

⁶ See KRS 439.340, 533.030. The Commonwealth argues that KRS 17.572 authorized the trial court to impose special conditions on Neff's parole. This section has since been repealed by the General Assembly. 2000 Ky. Acts Ch. 401, § 38. Furthermore, KRS 17.572 merely required that the sheriff of the county to which the offender was released notify certain agencies and individuals of relevant information, including any special conditions of release. Notification is now covered under KRS 17.510(5), although the sheriffs no longer have that duty.

rights were not affected by the trial court's order in this respect.

Accordingly, the order of the Barren Circuit Court is affirmed.

ALL CONCUR.

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