

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001997-MR

RONNIE HALL

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE WILLIAM T. CAIN, JUDGE
ACTION NO. 95-CR-00079

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: GUDGEL, JOHNSON AND SCHRODER, JUDGES.

JOHNSON, JUDGE: Ronnie Hall has appealed the order of sex offender risk determination entered in the Pulaski Circuit Court on August 23, 1999, finding him to be a moderate risk sex offender. Having concluded that Hall's classification was set in a manner consistent with Hyatt v. Commonwealth,¹ and that the 1998 amendments apply to him, we affirm.

Pursuant to his guilty plea, Hall was convicted by final judgment entered on January 16, 1997, of the felony charge

¹Ky., 72 S.W.3d 566 (2002).

of sodomy in the third degree.² Hall received a prison sentence of five years.

As Hall's release date approached, he was scheduled for a sex offender risk assessment hearing under the 1998 amendments to the sex offender registration laws.³ A hearing conducted on August 23, 1999, resulted in Hall being assessed as a moderate risk sex offender. This appeal followed.

After the filing of briefs in this matter, this appeal was abated pending the Supreme Court of Kentucky's review of a constitutional challenge to the 1998 amendments to the sex offender assessment statutes. On February 21, 2002, the Supreme Court rendered its opinion in Hyatt, upholding the constitutionality of the 1998 amendments. This Court then entered an order requiring Hall to show cause why the decision of the circuit court should not be affirmed on the basis of the Hyatt opinion.

In response to the show cause order, Hall takes the position that while the constitutional issues have been resolved, there remains a statutory issue concerning the applicability of the 1998 amendments to him. Hall argues that the 1998 amendments to the sex offender assessment statutes should not apply to him since he was convicted and sentenced prior to the effective date of the amendments.

²Kentucky Revised Statutes (KRS) 510.090.

³KRS 17.500 et seq., as amended by the 1998 Kentucky Acts Chapter 606.

However, in Hyatt, the Supreme Court found the 1998 amendments to be applicable to three inmates who had been incarcerated before the effective date of the amendments, and remained incarcerated on the effective date of the amendments. Section 199 of 1998 Kentucky Acts Chapter 606 reads as follows:

The provisions of Sections 138 through 155 of this Act shall apply to persons individually sentenced or incarcerated after the effective date of this Act.⁴

The statute does not use the words "began incarceration" or "entered into incarceration". The Legislature has directed that the amendments apply to persons "incarcerated after the effective date of the Act." If the Legislature had intended to apply the 1998 amendments only to individuals who received sentences after the effective date of July 15, 1998, there would have been no need to add the phrase "or incarcerated". We believe the use of this additional phrase clearly shows the Legislature's intent to also include inmates who had been sentenced before July 15, 1998, and remained incarcerated on July 15, 1998. Since Hall was incarcerated at the time the Act became effective, the Act does apply to him and it was proper for the circuit court to make the Sex Offender Risk Determination.

Finally, Hall also argued in his original brief that the circuit court could not proceed to hold the hearing and make the risk determination because his underlying conviction was void since he had been proceeded against by information after waiving indictment. Without addressing whether Hall could question the

⁴The effective date was July 15, 1998.

validity of his conviction in this context, we note that this issue was resolved adversely to Hall's position by the recent Supreme Court opinion of Malone v. Commonwealth.⁵

Accordingly, the order of sex offender risk determination entered by the Pulaski Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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⁵Ky., 30 S.W.3d 180 (2000).