

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000731-MR

FREDERICK THOMPSON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANN O'MALLEY SHAKE, JUDGE
ACTION NO. 84-CR-001631

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: COMBS, DYCHE, AND MILLER, JUDGES.

MILLER, JUDGE: Frederick Thompson brings this appeal from a February 21, 2000 order of the Jefferson Circuit Court. We affirm.

In March of 1985, appellant was convicted of two counts of first degree rape and sentenced to twenty years' imprisonment. In December of 1999, the Jefferson Circuit Court entered an Order For Sex Offender Risk Assessment. Appellant, through counsel, filed a motion challenging the applicability of the Sex Offender Registration Act¹ (the Act) (codified as Kentucky Revised Statutes

¹The Sex Offender Registration Act generally requires a person to register in certain circumstances after having been
(continued...)

(KRS) 17.500 *et seq.*) to him, and challenging the constitutionality of the Act; it appears that the circuit did not rule upon appellant's motion. Following a risk determination hearing, the circuit court entered an Order Of Sex Offender Risk Determination classifying appellant as a "moderate risk" offender. This appeal follows.

By order entered September 26, 2000, the Court of Appeals placed the above-styled appeal in "abeyance" pending disposition in the Kentucky Supreme Court of Hyatt v. Commonwealth, 2000-SC-0676-DG; Hall v. Commonwealth, 2000-SC-0820-DG; and Commonwealth v. Sims, 2000-SC-1076-DG and 2000-SC-0961-DG. The Supreme Court handed down a decision in the aforementioned appeals on February 21, 2002 in Hyatt v. Commonwealth, Ky., 72 S.W.3d 566 (2002). The Court of Appeals subsequently entered an order directing appellant to show cause why this appeal should not be "summarily affirmed under the authority" of Hyatt. Appellant responded that the constitutional issues were disposed of by Hyatt, but that an issue remained concerning interpretation of the Act. We therefore summarily affirm upon the constitutional issues and address the remaining issue upon the merits.

Appellant argues that the circuit court erroneously concluded that he must "register" under the Act. Specifically, appellant points out that he was sentenced in 1985, well before

¹(...continued)
convicted of a sex crime.

the effective date of the Act; hence, he believes the Act inapplicable to him.

The Act was originally contained in 1994 Ky. Acts Chapter 392 (1994 Act), which was entitled "AN ACT relating to the registration of sexual offenders." Section 6 of the 1994 Act, in pertinent part, read:

[T]his Act shall apply to persons **convicted** after the effective date of this Act. (emphasis added).

Subsequently, the 1994 Act was amended by 1998 Ky. Acts Chapter 606 (1998 Act), which was entitled "AN ACT relating to criminal justice matters." Section 199 of the 1998 Act², in pertinent part, reads:

[T]his Act shall apply to persons **individually sentenced or incarcerated** after the effective date of this Act. (emphasis added).

Juxtaposing Section 6 of the 1994 Act with Section 199 of the 1998 Act, we must conclude that Section 199 effectively repealed Section 6. Indeed, both sections deal with the same subject matter, the applicability of the Act, and are clearly repugnant to each other. See Harco Corporation v. Martin, 271 Ky. 572, 112 S.W.2d 693 (1937).

Under Section 6, the 1994 Act applied only to those individuals "convicted" upon its effective date. By contrast, Section 199 expanded the 1998 Act's grasp to include individuals

²It is an enigma as to why Section 6 of 1994 Ky. Acts Chapter 392 and Section 199 of the 1998 Ky. Acts Chapter 606 were not codified in Kentucky Revised Statutes but were rather placed in Compiler's notes after the codified sections of the aforementioned Acts.

"incarcerated" upon its effective date. We interpret the term "incarcerated" to mean simply being in jail or in prison. By utilizing that term, we think the legislature intended that the 1998 Act apply to individuals who were confined in a penal institution upon its effective date. We view Section 199 as effectively expanding the Act's ambit to include individuals who were convicted days, months, years, or even decades before its enactment, but who were confined in a penal institution upon its effective date. Simply put, we believe the 1998 Act applies to all individuals confined in a penal institution upon its effective date.

We are buttressed in our interpretation by Hyatt, 72 S.W.3d 566. Therein, Hyatt was sentenced to ten years' imprisonment upon second degree rape and second degree sodomy in 1993. Hyatt argued that "the Kentucky Registration and Notification Statutes were not intended to apply to persons who were convicted before July 15, 1994;" it appears Hyatt "was assessed under the 1998 Act." Id. at 571. Although this issue was not specifically addressed, the Court, nevertheless, applied the 1998 Act to Hyatt.

In sum, we conclude that Section 199 of the 1998 Act repealed Section 6 of the 1994 Act. We interpret Section 199 as encompassing those individuals confined in a penal institution upon its effective date. As appellant was confined in a penal institution upon the effective date of Section 199, we are of the opinion that he must register under the Act.

For the foregoing reasons, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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