

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-002525-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE STEPHEN K. MERSHON, JUDGE  
ACTION NO. 03-CR-001174

BENJAMIN HOLDERMAN

APPELLEE

OPINION  
AFFIRMING

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BEFORE: GUIDUGLI AND MINTON; ROSENBLUM, SENIOR JUDGE.<sup>1</sup>

GUIDUGLI, JUDGE: The Commonwealth of Kentucky appeals from an order of the Jefferson Circuit Court dismissing the April 30, 2003, indictment against Benjamin Holderman. The indictment alleged that Holderman, a registered sex offender, violated a provision of the 2000 version of "Megan's Law", KRS 17.510, requiring him to notify the state police of a change of address. The indictment also alleged that Holderman was a persistent

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<sup>1</sup> Senior Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

felony offender in the first degree. The Jefferson Circuit Court dismissed the indictment after agreeing with Holderman's contention that Peterson v. Shake,<sup>2</sup> prohibited Holderman from being charged under the 2000 version of Megan's Law because he was already a registrant under the 1994 version of the law. For the reasons stated below, we affirm the order on appeal.

On January 25, 1995, Holderman pled guilty to third-degree rape on the charge that he had sexual intercourse with a 13-year-old girl. He received a sentence of two years in prison, which was probated for five years.

On August 8, 1997, Holderman's probation was revoked and he was returned to prison to complete the two year sentence. He served the sentence and was released in June, 1998.

At the time of Holderman's release, the 1994 version of Megan's Law required him to register as a sex offender. He complied, and subject to the terms of the law was to remain on the registry through 2008. Megan's Law, as it then existed, provided that the failure to notify the proper authorities of a registrant's change of address constituted a misdemeanor. In 2000, the Kentucky legislature amended Megan's Law such that the failure to notify of a change of address became a felony.<sup>3</sup>

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<sup>2</sup> 120 S.W.3d 707 (Ky. 2003).

<sup>3</sup> Though not relevant to the instant appeal, Megan's Law, formally known as the Kentucky Sex Offender Registry Act, was previously amended in 1998.

On October 18, 2001, Holderman pled guilty to one count of theft by unlawful taking over \$300 and was sentenced to one year in prison. After an early release in November 2001, because of credit for time served, he failed to register and was indicted under the 2000 version of Megan's Law. He subsequently pled guilty to the felony and was sentenced to three years in prison, probated for five years.

On March 19, 2003, Holderman was charged with failing to notify the state police of a change of address. Relying on Peterson, supra, he moved to dismiss the indictment on the basis that he should be charged with a misdemeanor (under the 1994 version of Megan's Law) rather than a felony (under the 2000 version of the law). The trial court was persuaded by this argument, and on November 5, 2004, it sustained the motion to dismiss. This appeal followed.

The sole issue now before us is whether the trial court erred in dismissing the indictment based on Peterson. Peterson held in relevant part that an offender cannot "become" a registrant when he already is one. In Peterson, the defendant was released from prison prior to 2000, but failed to notify the authorities of his address change after 2000. The Kentucky Supreme Court held that Peterson was not bound by the 2000 Act because the Act did not apply to those who were already listed in the registry database.

The Commonwealth contends that Peterson is not applicable in the instant case because Holderman's reincarceration in 2001 constitutes a break in the chain of events which re-sets the clock, so to speak, at a time after the 2000 Act. Stated differently, the Commonwealth contends that Holderman's release from prison in 2001 met the statutory requirement that he become a registrant anew and that he be subject to a felony indictment for failure to comply with the 2000 Act's change of address requirement. Conversely, Holderman relies on Peterson for the proposition that he cannot be considered a new registrant after the enactment of the 2000 Act because he already was a registrant resulting from the underlying 1995 rape conviction.

We have closely examined the written arguments, the record, and the law, and must conclude that Peterson is applicable to the instant facts and disposes of the issue at bar. Peterson noted that the express language of the 2000 Act made it applicable only to those who were required to become registrants after the effective date of the Act.<sup>4</sup> The court stated that, "[I]t is quite apparent that the 2000 amendments were only intended to apply to persons who were required to

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<sup>4</sup> The Act states that the "provisions of Sections 15 to 30 of this Act shall apply to all persons who, after the effective date of this Act are required under Section 16 of this Act to become registrants, as defined in Section 15 of this Act." The effective date of the Act was April 11, 2000.

become registrants following April 11, 2000.”<sup>5</sup> (Emphasis original). It went on to note that it did not need to speculate as to the legislature’s intent on this issue because it was expressed in the unambiguous statutory language.<sup>6</sup>

Equally important for our purposes, Peterson also held that once a person becomes a registrant in the sex offender database, he or she cannot “become” a registrant again at a later date. It stated,

Here Appellant was released from state custody and registered with the sex offender registry in June of 1999. It necessarily follows that Appellant could not have been required to “become” a registrant after April 11, 2000, since he was included in the database of registered sex offenders before that date. In other words, Appellant could not have “become” a registrant, as he already was one.<sup>7</sup>

Similarly, Holderman cannot become a registrant under the 2000 Act when he already was a registrant. We are aware that he pled guilty to failing to register anew in December 2001, after his release from prison on a theft conviction, but this does not change the fact that Peterson says he was not required to do so.

In sum, since Peterson recognized that the 2000 Act applies only to new registrants, and because an individual already appearing in the registry database cannot “become” a new registrant under the Act, Holderman cannot be required to

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<sup>5</sup> Peterson, 120 S.W.3d at 709.

<sup>6</sup> Id.

<sup>7</sup> Id.

register anew and is not bound by the 2000 Act. As such, he is not subject to a felony indictment under the 2000 Act, and the Jefferson Circuit Court properly so found. Holderman's remaining argument on the issue regarding whether he was given proper notice of his duty to register is moot.

For the foregoing reason, we affirm the opinion of the Jefferson Circuit Court dismissing Holderman's indictment.

ALL CONCUR.

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