

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-002315-MR

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF KENTUCKY
STATE POLICE (KSP)

APPELLANTS

v. APPEAL FROM CASEY CIRCUIT COURT
HONORABLE JAMES L. BOWLING, JR., JUDGE
ACTION NOS. 83-CR-00031 AND 83-CR-00032

DONNIE PROPES

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: CLAYTON, STUMBO AND THOMPSON, JUDGES.

STUMBO, JUDGE: The Department of Kentucky State Police (KSP) appeals from an order of the Casey Circuit Court overruling KSP's motion for relief. That motion was in response to another order of the circuit court ordering that Donnie Propes be removed from the Kentucky Sex Offender Registry and be released from the requirement to register as a sex offender. We disagree and reverse and remand.

In 1974, Propes was convicted of murder and sentenced to life imprisonment. On or around October 5, 1982, Propes was granted parole on the murder charge. About one year later, Propes was convicted of rape and sodomy. He was sentenced to two terms of ten years, to be served concurrently. This new ten year sentence was also to be served concurrently with the life sentence. He was then returned to prison. On or about June 2, 1994, Propes was granted parole again. On May 21, 2004, Propes violated parole and was returned to prison. He was granted parole again in September of 2005.

In order to be released this last time, Propes was required to register as a sex offender. Propes did register, but then later sought to be removed from the registry. He petitioned the Casey Circuit Court arguing that he had served his sentence for the sex crimes prior to the sex offender registry coming into existence and that only those who commit sex crimes after the inception of the program are required to register. KSP was not made a party to this action. The circuit court granted Propes' petition and ordered KSP to remove him from the registry and release him from the requirement that he register as a sexual offender. Upon notice of this order, KSP filed a motion for relief seeking dismissal of the order. The motion was overruled and this appeal followed.

KSP argues that the registration was required under the Sex Offender Registry Act, or SORA. Propes argues that he should not have been required to register because he committed and was convicted of his sex crime prior to the enactment of the registry legislation in 1994. KSP argues that he never finished his

sentence for rape and sodomy and when he violated his parole in 2004, he became subject to the registry requirement.

In 1994, Kentucky first enacted SORA, also known as “Megan’s Law.” It required those convicted of sex offenses who were not incarcerated to register with their local probation and parole office, and to continue to register for a period of ten years after their final discharge from confinement, probation, parole, or any other form of supervised release. Failure to comply was a Class A misdemeanor. SORA also criminalized knowingly providing “false, misleading, or incomplete information” as a Class A misdemeanor. However, SORA’s registration requirements applied only “to persons convicted after the effective date” of the Act.

Buck v. Commonwealth, 308 S.W.3d 661, 663 (Ky. 2010).

The SORA was amended in 1998, 2000, and 2006. The 1998 amendment added the requirement that a person “incarcerated” for a sex crime be required to register. The central question then becomes, was Propes incarcerated for a sex crime when his parole was revoked in 2004?

Similarities to this case can be found in *Buck, supra*.

In 1985, Appellant William Buck was convicted of first-degree sexual abuse. He received a probated three-year sentence. But in 1987, Buck was convicted of two additional, unrelated felonies (second-degree assault and second-degree burglary). He was sentenced to serve 23 years for all three convictions. In 1997, Buck was granted parole. Because the 1994 version of SORA applied only prospectively, Buck was not subject to SORA’s registration requirements.

In February 2000, Buck violated the conditions of his parole, and was returned to prison. Because Buck then became a person incarcerated after the effective date of the 1998 amendments, those provisions applied to him,

and he was required to register upon release. In addition, because Buck was still incarcerated when the 2000 amendments went into effect, he became subject to those provisions as well. In March 2001, Buck again received parole. In April 2002, Buck again violated the terms of his parole, and he returned to prison. In August 2005, Buck was once more granted parole.

Id. at 664.

Like Buck, when Propes was first paroled on June 2, 1994, he was not subject to SORA. However, when he violated his parole in 2004, both the 1998 and 2000 amendments were in effect. KSP argues that in 2004, Propes was “incarcerated” due to a sex crime and therefore fell under SORA. As *Buck, supra*, demonstrates, if a person is incarcerated for violating parole and was on parole for a sex crime, that incarceration puts the person into SORA territory.

KSP claims that Propes was on parole for a sex crime in 2004, even though he only received a ten year sentence. We agree. KRS 532.060(1) states that “[a] sentence of imprisonment for a felony shall be an indeterminate sentence” KRS 532.120(1) states:

[a]n indeterminate sentence of imprisonment commences when the prisoner is received in an institution under the jurisdiction of the Department of Corrections. When a person is under more than one (1) indeterminate sentence, the sentences shall be calculated as follows:

(a) If the sentences run concurrently, the maximum terms merge in and are satisfied by discharge of the term which has the longest unexpired time to run

KSP argues that Propes’ ten year sentence merged into his life sentence. Since his murder, rape, and sodomy convictions were all felonies, they are for

indeterminate sentences and therefore merge under KRS 532.120. KSP also argues that his life sentence has the longest unexpired time to run and therefore his ten year sentence does not expire until his life term expires, which would be never. In essence, KSP argues that when Propes was paroled in 1994, it was for the murder, rape, and sodomy charges. Further, when his parole was revoked in 2004, he then became incarcerated for the murder, rape, and sodomy charges. We agree. This same calculation and outcome can be seen in *Stewart v. Kentucky Parole Bd.*, 2003 WL 1860278 (Ky. App. 2003).

Since Propes was incarcerated for a sex crime in 2004 due to a parole violation, he is subject to the SORA requirements. Had Propes not violated his parole once he was released in 1994, he would not have been required to register under SORA.

For the reasons set forth herein, we reverse and remand this case for further action consistent with this opinion.

ALL CONCUR.

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