Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000475-MR

JIMMY DALE STAGE   APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v.   HONORABLE BARRY WILLETT, JUDGE
ACTION NO. 93-CR-002484

COMMONWEALTH OF KENTUCKY   APPELLEE

OPINION AND ORDER
DISMISSING APPEAL

** ** ** ** **

BEFORE: LAMBERT AND MOORE, JUDGES; ISAAC,[1] SENIOR JUDGE.

MOORE, JUDGE: Jimmy Dale Stage appeals the Jefferson Circuit Court's order of sex offender risk determination. After a careful review of the record, we dismiss this appeal because Stage lacks standing to bring the only claim he raises on appeal.

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[1] Senior Judge Sheila R. Isaac, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 1994, Stage pleaded guilty to one count of second-degree sodomy

and two counts of second-degree sexual abuse. He was sentenced to serve a total

of ten years of imprisonment. Before his scheduled release from prison in 2000,

the trial court conducted a sex offender risk assessment hearing and found Stage to

be a high risk sex offender. Stage appealed that determination, and this Court

reversed, holding that the trial court erred in relying on the "risk assessment report

without the author of the report available to authenticate the report and to be cross-

examined." Discretionary review was thereafter sought in the Kentucky Supreme

Court, but in 2003, that Court denied the motion for discretionary review.

The trial court did not conduct another sex offender risk assessment

hearing until 2010.[2] Following the hearing, in which the author of the risk

assessment report testified, the court entered an order again finding Stage to be a

high risk sex offender, requiring him to "register in accordance with the Kentucky

Sex Offender Registration Act [SORA], KRS[3] 17.510."

Stage now appeals, contending as follows: "The [Kentucky] Supreme

Court has chosen to ignore the title of 2006 Kentucky Acts, Ch. 182. By

continuing to characterize sex offender registration as civil and regulatory in

nature, the Supreme Court has rendered the scheme void as a violation of Section

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[2] The parties do not explain, and the record before us does not reveal, why the trial court waited almost seven years to hold the re-assessment hearing, but we find the fact that the court allowed such a large amount of time to pass before holding the hearing disconcerting. Additionally, we note that KRS 17.570, pursuant to which Stage's initial sex offender risk assessment hearing was conducted, was repealed in 2000, soon after the initial risk assessment hearing was held in this case.

[3] Kentucky Revised Statute.

51 of the Constitution of Kentucky." After briefing was concluded in this appeal, Stage moved to file a supplemental brief for the purpose of notifying the Court of a recent Supreme Court case, *Jones v. Commonwealth*, 319 S.W.3d 295, 297 (Ky. 2010), in which the Court stated that although "strict compliance with the notification requirement of KRS 418.075 is required, and failure to give notice leaves the constitutional challenge unpreserved," such an error can be reviewed for palpable error. This Court granted Stage's motion to file a supplemental brief.

II. ANALYSIS

Stage alleges that the Kentucky Supreme Court has held that the sex offender registration scheme is a civil regulatory scheme that is not punitive in nature. *See Buck v. Commonwealth*, 308 S.W.3d 661 (Ky. 2010); *Commonwealth v. Baker*, 295 S.W.3d 437 (Ky. 2009); *Hyatt v. Commonwealth*, 72 S.W.3d 566 (Ky. 2002). The Commonwealth concedes that "the general registration scheme is still civil in nature."

However, Stage argues that the title of 2006 Kentucky Acts, Ch. 182, which pertains to the current version of the Kentucky SORA, KRS 17.510, reads "sex offenses and the punishment thereof," and that Kentucky Constitution Section 51 "prevents enactment of disparate subject matters in a single bill." Thus, Stage contends that because the title of 2006 Kentucky Acts, Ch. 182 reads "sex offenses and the punishment thereof," but the Kentucky Supreme Court has held that SORA is civil in nature, the scheme is void because it violates Section 51 of the Kentucky Constitution. Kentucky Constitution Section 51 provides:

> No law enacted by the General Assembly shall relate to
> more than one subject, and that shall be expressed in the
> title, and no law shall be revised, amended, or the
> provisions thereof extended or conferred by reference to
> its title only, but so much thereof as is revised, amended,
> extended or conferred, shall be reenacted and published
> at length.

The Commonwealth argues that Stage failed to preserve this claim by failing to raise it in the trial court and by failing to notify the Attorney General of his constitutional challenge to the statute, as he was required to do pursuant to KRS 418.075 and CR[4] 24.03. In his reply brief, Stage contended that he was not required to notify the Attorney General. However, in his supplemental brief, Stage alleges that even if the claim is unpreserved, this Court should review it for palpable error, pursuant to *Jones*, 319 S.W.3d at 297.

Both Stage and the Commonwealth failed to note that in the record, there is a motion filed by Stage titled "Motion to Vacate and to Declare the Law," which was filed in 2007 and essentially makes the same claim that Stage raises in this appeal. The Certificate of Service at the end of that motion states that "[p]ursuant to CR 24.03, copies of this Motion and the Incorporated Memorandum were mailed to Hon. Gregory Stumbo, Attorney General of Kentucky, . . . on April 11, 2007." Therefore, it appears that the Attorney General was notified of this constitutional challenge to the statute. However, it appears from the record before us that the circuit court never ruled on that motion. Under these circumstances, we would usually reverse and remand for the circuit court to enter its findings of fact and conclusions of law concerning such a motion. In the present case, however,

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[4] Kentucky Rule of Civil Procedure.

for reasons that will be discussed *infra*, we find it unnecessary to reverse and remand for further findings.

Stage argues that 2006 Kentucky Acts, Ch. 182 violates Section 51 of the Kentucky Constitution, due to the fact that the Supreme Court has characterized the scheme as civil and nonpunitive in nature. Pursuant to the record before us, Stage was released from prison on March 8, 2000, and he registered as a sex offender in February 2000. The Kentucky Supreme Court has held that when a sex offender is released from prison, the version of the statute then in effect, which the sex offender is required to register under, is the version of the statute applicable to that sex offender. *See Peterson v. Shake*, 120 S.W.3d 707 (Ky. 2003). The 1998 version of Kentucky's SORA was the version in effect when Stage was released from prison and initially registered.[5] Therefore, Stage lacks standing to challenge the constitutionality of the 2006 version of the Act, which is 2006 Kentucky Acts, Ch. 182.

Finally, we note that although the title of 2006 Kentucky Acts, Ch. 182 reads "sex offenses and the punishment thereof," the title of the 1998 Act where the 1998 version of SORA is found is different. Rather, 1998 Kentucky Acts, Ch. 606 is simply titled "AN ACT relating to criminal justice matters," and Stage raises no challenge to its constitutionality. Therefore, this appeal is moot.

Accordingly, this appeal is dismissed.

ALL CONCUR.

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[5] The 2000 version of SORA became effective shortly thereafter, on April 11, 2000.

ENTERED: <u>February 18, 2011</u>   <u>/s/   Joy A. Moore</u>
                                        JUDGE, COURT OF APPEALS

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