

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000489-MR

JOYCE ANN POWELL

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS KNOPF, JUDGE
ACTION NO. 90-CR-001119

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: BARBER, JOHNSON AND SCHRODER, JUDGES.

JOHNSON, JUDGE. Joyce Ann Powell has appealed to this Court from the order of Sex Offender Risk Determination entered by the Jefferson Circuit Court on January 28, 1999, finding her to be a low risk sex offender. Having concluded that Powell's classification was set in a manner consistent with Hyatt v. Commonwealth,¹ and that the 1998 amendments apply to her, we affirm.

By judgment entered September 11, 1992, the circuit court accepted Powell's guilty plea and convicted her of two

¹Ky., 72 S.W.3d 566 (2002).

counts of sexual abuse in the first degree² and one count of complicity to attempted sodomy in the first degree.³ Powell received prison sentences totaling ten years.

In preparation for her release from prison, Powell was assessed pursuant to the Sex Offender Risk Determination Procedure.⁴ As a result of the hearing conducted pursuant to KRS 17.570, Powell was found to be a low risk sex offender.

This appeal was abated pending resolution by the Supreme Court of Kentucky of the 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. When the Supreme Court's opinion became final, this Court entered an order directing Powell 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, Powell argues that the Hyatt opinion does not dispose of the issue of the applicability of the 1998 amendments to her. Powell argues that since she was convicted in 1992, the 1998 amendments do not apply to her and that she is not subject to the procedure set out in those amendments.

However, in Hyatt, the Supreme Court found the 1998 amendments to be applicable to three inmates who had been

²Kentucky Revised Statutes (KRS) 510.110.

³KRS 510.070 and KRS 502.020.

⁴KRS 17.500 et seq.

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.⁵

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 Powell was incarcerated at the time the Act became effective, the Act does apply to her and it was proper for the circuit court to make the Sex Offender Risk Determination.

Accordingly, the order of Sex Offender Risk Determination entered by the Jefferson Circuit Court is affirmed.

ALL CONCUR.

⁵The effective date was July 15, 1998.

BRIEF FOR APPELLANT:

J. David Niehaus
Daniel T. Goyette
Louisville, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler, III
Attorney General

Tami Allen Stetler
Assistant Attorney General
Frankfort, Kentucky