

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1999-CA-000712-MR

BRIAN KEITH HAMILTON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE JUDITH McDONALD-BURKMAN, JUDGE  
ACTION NO. 85-CR-001664

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BARBER, JOHNSON AND SCHRODER, JUDGES.

JOHNSON, JUDGE: Brian Keith Hamilton has appealed to this Court from the order of Sex Offender Risk Determination entered by the Jefferson Circuit Court on March 15, 1999, finding him to be a high risk sex offender. Having concluded that Hamilton's classification was set in a manner consistent with Hyatt v. Commonwealth,<sup>1</sup> and that the 1998 amendments apply to him, we affirm.

By judgment entered on May 19, 1986, Hamilton was convicted in the Jefferson Circuit Court of rape in the first

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<sup>1</sup>Ky., 72 S.W.3d 566 (2002).

degree,<sup>2</sup> two counts of sodomy in the first degree,<sup>3</sup> and kidnapping.<sup>4</sup> Hamilton received a 20-year prison sentence on each conviction.

In preparation for his release from prison, Hamilton was assessed pursuant to the Sex Offender Risk Determination Procedure.<sup>5</sup> As a result of the hearing conducted pursuant to KRS 17.570, Powell was found to be a high 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 Hamilton to show cause why the decision of the circuit court should not be affirmed on the basis of the Hyatt opinion.

There was no response to the show cause order; but Hamilton argued in his original brief that since he was convicted in 1986, the 1998 amendments were not applicable to him. However, in Hyatt, the Supreme Court found the 1998 amendments to be applicable to three inmates who had been incarcerated before the effective date of the amendments, and remained incarcerated

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<sup>2</sup>Kentucky Revised Statutes (KRS) 510.040.

<sup>3</sup>KRS 510.070.

<sup>4</sup>KRS 509.040.

<sup>5</sup>KRS 17.500 et seq.

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.<sup>6</sup>

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 Hamilton was incarcerated at the time the Act became effective, the Act does apply to him 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.

BRIEF FOR APPELLANT:

J. David Niehaus  
Daniel T. Goyette  
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BRIEF FOR APPELLEE:

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<sup>6</sup>The effective date was July 15, 1998.

