

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000732-MR

CALVIN L. SMITH

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS WINE, JUDGE
ACTION NO. 93-CR-001150

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: BARBER, JOHNSON AND SCHRODER, JUDGES.

JOHNSON, JUDGE: Calvin Smith has appealed to this Court from the order of Sex Offender Risk Determination entered by the Jefferson Circuit Court on March 29, 1999, finding him to be a high risk sex offender. Having concluded that Smith's classification was set in a manner consistent with Hyatt v. Commonwealth,¹ and that the 1998 amendments apply to him, we affirm.

By judgment entered on October 6, 1993, the circuit court accepted Smith's guilty plea and convicted him of four

¹Ky., 72 S.W.3d 566 (2002).

counts of sexual abuse in the first degree.² Smith received prison sentences totaling ten years.

In preparation for his release from prison, Smith was assessed pursuant to the Sex Offender Assessment Act as amended in 1998.³ As a result of the hearing conducted pursuant to KRS 17.570, Smith 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 Smith 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, Smith argues that the Hyatt opinion does not dispose of the issue of the applicability of the 1998 amendments to him. Smith argues that since he was convicted in 1993, the 1998 amendments do not apply to him and that he 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 incarcerated before the effective date of the amendments, and remained incarcerated on the effective date of the amendments.

²Kentucky Revised Statutes (KRS) 510.110.

³KRS 17.500 et seq.

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.⁴

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 Smith 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:

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⁴The effective date was July 15, 1998.