

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1999-CA-002105-MR

JEFF LEAVELL

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT  
HONORABLE JAMES HIGGINS, JUDGE  
ACTION NO. 94-CR-00094

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BUCKINGHAM, McANULTY AND TACKETT, JUDGES.

BUCKINGHAM, JUDGE: Jeff Leavell appeals from an order of the Christian Circuit Court denying his motion to dismiss the sex offender risk determination hearing. We affirm.

On April 13, 1994, Leavell was indicted on a charge of rape in the first degree. His girlfriend alleged that he assaulted and forcibly raped her. On May 6, 1994, Leavell entered an Alford plea of guilty to the amended charge of sexual abuse in the first degree. Pursuant to a written plea agreement, the trial court sentenced Leavell on June 17, 1994, to two years in prison. However, pursuant to the plea agreement, the sentence was probated for a five-year period on various conditions.

On May 21, 1997, Leavell's probation was revoked for violations of the conditions of his probation. In May 1999, the trial court received notice from the Department of Corrections that Leavell was to be released on June 1, 1999. The written notice notified the court that the Department was planning to conduct a sex offender risk assessment on Leavell pursuant to KRS<sup>1</sup> 17.570. On June 18, 1999, the court issued a Notice of Sex Offender Risk Determination Hearing and scheduled the hearing on June 23, 1999. Leavell was still in prison at that time.

Prior to the scheduled hearing, Leavell moved the court to dismiss or cancel the risk determination hearing, arguing that the Sex Offender Registration Act violated the prohibition against *ex post facto* laws and violated the 1994 plea agreement he had with the Commonwealth. The court denied the motion but entered an order staying the hearing pending this appeal.

This appeal was abated pending a resolution of the constitutional challenge to the 1998 amendments of the sex offender risk assessment statutes, KRS 17.500 et seq., by the Kentucky Supreme Court. On February 21, 2002, the Kentucky Supreme Court rendered an opinion in Hyatt v. Commonwealth, Ky., 72 S.W.3d 566 (2002), upholding the constitutionality of those amendments. When the supreme court decision became final, this appeal was restored to the active docket of this court, and an order entered directing Leavell to show cause why the order appealed from should not be affirmed. There has been no response to that order.

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<sup>1</sup> Kentucky Revised Statutes.

Leavell argues that the statute does not apply to him because it was not in effect at the time he committed his offense, at the time he entered his plea of guilty, or at the time he was sentenced. The 1997 amendments apply to persons individually sentenced or incarcerated after July 15, 1998. Hyatt, 72 S.W.3d at 570. Like Hyatt, Leavell was incarcerated after July 15, 1998, for a sex offense. Thus, the statute applies to him. Furthermore, the supreme court held in the Hyatt case that the amendments did not amount to *ex post facto* laws. Id. at 581.

Also, we reject Leavell's argument that forcing him to comply with the sex offender registration statutes violates his plea agreement with the Commonwealth. Again, since our supreme court has held that the amendments may be applied to individuals who committed sex crimes and were sentenced prior to the effective date of the amendments, we conclude that Leavell's argument is without merit.

The order of the Christian Circuit Court is affirmed.

ALL CONCUR.

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