

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1999-CA-002547-MR

ISAAC ELWOOD CAISE

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE LEWIS PAISLEY, JUDGE  
ACTION NO. 82-CR-00314

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING IN PART,  
VACATING IN PART, AND REMANDING  
\*\* \*\*

BEFORE: JOHNSON, KNOFF, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Isaac Caise appeals from an order entered by the Fayette Circuit Court designating him as a moderate risk sex offender pursuant to KRS 17.570. This appeal was held in abeyance pending a decision by the Kentucky Supreme Court resolving the issue of the constitutionality of the Sexual Offender Registration Act, KRS 17.500 et seq., commonly known as "Megan's Law." In Hyatt v. Commonwealth, Ky., 72 S.W.3d 566 (2002), the Kentucky Supreme Court upheld the constitutionality of the statutory scheme but reversed and remanded for a new risk assessment hearing based on procedural due process grounds.

On June 15, 1982, Caise was indicted by the Fayette County Grand Jury on one count each of kidnapping, first-degree rape, first-degree robbery, and second-degree assault, as a result of acts he committed on March 1, 1982. On July 13, 1982, Caise pled guilty to first-degree rape and first-degree robbery, with the Commonwealth recommending that the kidnapping and assault charges be dismissed. In an order entered on August 11, 1982, Caise was sentenced to two 12-year terms, with the sentences to run consecutively, for a total of 24 years' imprisonment. Pursuant to the Commonwealth's recommendation, the kidnapping and assault charges were dismissed.

Caise was scheduled for release on October 1, 1999. On August 19, 1999, the Fayette Circuit Court entered an order pursuant to KRS 17.570, directing that a risk assessment be prepared for Caise. A risk determination hearing was held on September 29, 1999. On October 6, 1999, the court entered an order finding Caise to be a moderate risk sex offender. This appeal followed.

On appeal, Caise argues that application of the Kentucky sex offender statutes to him violates the prohibitions against ex post facto laws and double jeopardy found in the United States and Kentucky Constitutions. The Kentucky Supreme Court specifically addressed these issues in Hyatt, and held that the sexual offender registration and notification statutes at issue do not violate prohibitions against ex post facto laws, nor expose an individual to double jeopardy.

Additionally, Caise argues that the circuit court erred

by overruling his motion for funds to hire an expert to perform an independent sex offender risk assessment on him. As such, the only expert testimony presented at the risk assessment hearing was that of the "certified provider," KRS 17.550(8), an employee of the Department of Corrections, who prepared the risk assessment report. The trial court's failure to allocate funds for an independent expert is reviewed under an abuse of discretion standard. McKinney v. Commonwealth, Ky., 60 S.W.3d 499, 505 (2001). The issue of allocation of funds for an expert was not directly considered in Hyatt. However, the Supreme Court acknowledged and emphasized the need for procedural protections in sexual predator proceedings. Although the Court held that the registration scheme was not penal in nature, it nevertheless held that it was imperative that counsel have time to adequately prepare for the hearing, that the author of the risk assessment report be in attendance at the hearing, and that the sex offender be afforded the opportunity to present expert testimony to rebut the opinions expressed by the author of the risk assessment report. Hyatt, 72 S.W.3d at 573, 577.

The rights articulated in Hyatt are meaningless to an indigent unless funds are made available to allow him to obtain his own expert in the field of psychology or psychiatry. We therefore hold that the trial court abused its discretion in denying Caise's motion for funds to hire an independent expert.

For the aforementioned reasons, the order of the Fayette Circuit Court determining Caise to be a moderate risk sex

offender is vacated, and the matter is remanded for a new hearing consistent with this opinion.

ALL CONCUR.

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