

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002405-MR

ROGER GILLILAND

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE JAMES R. DANIELS, JUDGE
ACTION NO. 86-CR-00088

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: COMBS, DYCHE, AND MILLER, JUDGES.

MILLER, JUDGE: Roger Gilliland brings this appeal from a September 9, 1999 order of the McCracken Circuit Court. We affirm.

In May 1986, Gilliland pled guilty to first degree rape and first degree sexual abuse. He was sentenced to a total of twenty years' imprisonment. Shortly before Gilliland's scheduled release from prison, in 1999, the court entered an Order Of Sex Offender Risk Determination pursuant to the Sex Offender Registration Act, codified as Kentucky Revised Statutes (KRS) 17.500 *et seq.* The court conducted a hearing on August 27, 1999, during which arguments were heard from both Gilliland and the

Commonwealth. The court also considered the testimony of at least one victim, and a Risk Assessment offered by a state certified psychologist (KRS 17.554). On September 9, 1999, the court entered findings of fact and conclusions of law in an Order of Sex Offender Risk Determination. Therein, the court concluded that Gilliland was a "moderate risk" sex offender. This appeal followed.

By order entered September 26, 2000, the Court of Appeals placed the above-styled appeal in "abeyance" pending disposition in the Kentucky Supreme Court of Hyatt v. Commonwealth, 2000-SC-0676-DG; Hall v. Commonwealth, 2000-SC-0820-DG; and Commonwealth v. Sims, 2000-SC-1076-DG and 2000-SC-0961-DG. The Supreme Court handed down a decision in the aforementioned appeals on February 21, 2002 in Hyatt v. Commonwealth, Ky., 72 S.W.3d 566 (2002). The Court of Appeals subsequently entered an order directing appellant to show cause why this appeal should not be "summarily affirmed under the authority" of Hyatt. Appellant responded that the constitutional issues were disposed of by Hyatt, but that an issue remained concerning interpretation of the Act. We therefore summarily affirm upon the constitutional issues and address the remaining issue upon the merits.

Gilliland maintains the circuit court erred by determining him to be a moderate risk sex offender. Our standard of review is whether the circuit court's findings of fact are clearly erroneous. Ky. R. Civ. P. 52.01; Yates v. Wilson, Ky., 339 S.W.2d 458 (1960). On August 27, 1999, sex offender risk

assessment was controlled by KRS 17.570, which read in pertinent part:

(1) Upon conviction of a "sex crime" as defined in KRS 17.500 and within sixty (60) calendar days prior to the discharge, release, or parole of a sex offender, the sentencing court shall order a sex offender risk assessment by a certified provider . . .

. . . .

(3) In making the determination of risk, the sentencing court shall review the recommendations of the certified provider along with any statement by a victim or victims and any materials submitted by the sex offender.

(4) The court shall conduct a hearing in accordance with the Rules of Criminal Procedure and shall allow the sex offender to appear and be heard.

. . . .

(6) The sentencing court shall issue findings of fact and conclusions of law and enter an order designating the level of risk.

In the case *sub judice*, the circuit court considered the Sex Offender Risk Assessment. Utilizing multiple assessment instruments, the state certified provider concluded that Gilliland was "overall . . . a moderate risk" for re-offending. There was also testimony from at least one victim. We believe the above evidence alone constitutes substantial evidence supporting the court's finding that Gilliland was a moderate risk sex offender. Simply put, we cannot say the circuit court's findings were clearly erroneous. As such, we are of the opinion the circuit court did not err in determining Gilliland was a moderate risk sex offender under KRS 17.570.

For the foregoing reasons, the order of the McCracken Circuit Court is affirmed.

ALL CONCUR.

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