

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002926-MR

JEFFREY LYNN VANDEVEER

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE GREGORY M. BARTLETT, JUDGE
ACTION NO. 86-CR-00215

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING IN PART AND
REVERSING AND REMANDING IN PART
** **

BEFORE: COMBS, DYCHE, AND MILLER, JUDGES.

MILLER, JUDGE: Jeffrey Lynn Vandever brings this appeal from a November 2, 1999 order of the Kenton Circuit Court. We affirm in part and reverse and remand in part.

In 1986, appellant was charged in a petition before the juvenile session of the Kenton District Court with criminal attempt to commit rape in the first degree, first degree sodomy, and first degree sexual abuse. On July 9, 1986, the district court entered an order transferring appellant to circuit court for prosecution as an adult under Kentucky Revised Statutes (KRS) 208.170 (repealed July 1, 1987). Following a jury trial, he was

found guilty of two counts of first degree sexual abuse, and one count of first degree sodomy. On December 9, 1986, the circuit court entered judgment sentencing appellant to a total of twenty years' imprisonment.

On September 16, 1999, the circuit court entered an Order For Sex Offender Risk Assessment pursuant to the Sex Offender Registration Act (the Act)¹(codified as KRS 17.500 *et seq.*). Appellant, through counsel, filed a motion challenging the constitutionality of the Act and challenging the applicability of the Act to him. On November 2, 1999, the circuit court denied same, and entered an Order Of Sex Offender Risk Determination finding appellant to be a "high risk" sexual offender. This appeal follows.

By order entered October 19, 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

¹The Sex Offender Registration Act generally requires a person to register in certain circumstances after having been convicted of a sex crime.

therefore summarily affirm upon the constitutional issues and address the remaining issue upon the merits.

Appellant contends that the circuit court erroneously concluded that he must "register" under the Act. KRS 17.510(2) of the Act specifies who must register thereunder:

Any person eighteen (18) years of age or older at the time of the offense or any youthful offender who has committed or attempted to commit a sex crime shall, within ten (10) days after his release by the court, the parole board, or the cabinet, register with the appropriate local probation and parole office in the county in which he resides. (emphasis added).

As appellant committed the "sex" crimes before the age of eighteen, he would have to qualify as a "youthful offender" to come within the purview of the Act. KRS 17.510(2)

It is axiomatic that words having acquired a particular meaning in law are to be afforded that same meaning when used in a statute. See Hawley Coal Company v. Bruce, 252 Ky. 455, 67 S.W.2d 703 (1934); Payton v. Norris, 240 Ky. 555, 42 S.W.2d 723 (1931). The term "youthful offender" has been routinely used in our Uniform Juvenile Code (the Code) (KRS Chapter 600) and has been specifically defined in KRS 600.020(56) of the Code:

"Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

We believe the term "youthful offender" has acquired a particular meaning in the law and must be given such meaning in KRS 17.510(2). Accordingly, we interpret "youthful offender" in KRS

17.510(2) as meaning a person transferred to circuit court under KRS Chapter 635 or 640.

We are buttressed in our interpretation by the legislature's subsequent amendment of KRS 17.510(2), effective July 15, 2000. KRS 17.510(2), as amended, reads:

A registrant shall, on or before the date of his or her release by the court, the parole board, the cabinet, or any detention facility, register with the appropriate local probation and parole office in the county in which he or she intends to reside. The person in charge of the release shall facilitate the registration process.

A registrant is thereafter defined by KRS 17.500(4):

"Registrant" means:

- (a) Any person eighteen (18) years of age or older at the time of the offense or any youthful offender, as defined in KRS 600.020, who has committed:
 - 1. A sex crime; or
 - 2. A criminal offense against a victim who is a minor . . .

. . . .

By amendment, the legislature has specifically utilized the definition in KRS 600.020(56) to define the term "youthful offender" in KRS 17.510(2).

Because we define the term "youthful offender" in KRS 17.510(2) as a person transferred to circuit court under KRS Chapter 635 or 640, we are constrained to conclude that appellant does not meet such definition. Appellant was transferred to circuit court under KRS 208.170; he was not transferred under KRS 635 or 640.

The Commonwealth, however, argues that KRS 635.020 effectively supplanted KRS 208.170. The Commonwealth urges this

Court to adopt a broad interpretation of 600.020(56); the Commonwealth believes that the legislature intended a transfer under KRS 208.170 be tantamount to a transfer under KRS 635.020. We disagree.

In determining legislative intent, it is our duty to consider words used in the statute rather than surmising what may have been intended but was not expressed. See Hale v. Combs, Ky., 30 S.W.3d 146 (2000). We view KRS 600.020(56) as specific and unambiguous. Therein, a "youthful offender" is defined as a person transferred to circuit court under KRS Chapter 635 or 640; the statute makes no reference to KRS 208.170. We think the legislature clearly signaled its intent by the words utilized therein. Thus, we decline to adopt the Commonwealth's broad interpretation of KRS 600.020(56).

In sum, we are of the opinion that a "youthful offender" under KRS 17.510(2) is a person who is transferred to circuit court under the provisions of KRS Chapter 635 or 640. As appellant was not transferred to circuit court under those statutes, we conclude that the appellant is not a "youthful offender" under KRS 17.510(2). We thus hold that appellant is not required to register under the Act.

For the foregoing reasons, the order of the Kenton Circuit Court is affirmed in part and reversed and remanded in part for proceedings consistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Irvin J. Halbleib
Louisville, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General of Kentucky
Frankfort, Kentucky

Tami Allen Stetler
Assistant Attorney General
Frankfort, Kentucky