

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1999-CA-002989-MR

DONALD J. SLEETS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE JAMES M. SHAKE, JUDGE  
ACTION NO. 90-CR-000961

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
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BEFORE: COMBS, MILLER, and PAISLEY, Judges.

COMBS, JUDGE: Donald J. Sleets appeals from an order of the Jefferson County Circuit Court which found him to be a moderate risk sex offender. We affirm.

Sleets was indicted for first-degree sodomy. On December 5, 1991, he entered a plea of guilty but mentally ill and was sentenced on March 23, 1992, to thirteen-years' imprisonment. On September 28, 1999, the trial court ordered Sleets to undergo a sex offender risk assessment pursuant to KRS<sup>1</sup> 17.570. The hearing took place on November 24, 1999. On November 30, 1999, the trial court entered an Order of Sex

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

Offender Risk Determination, classifying Sleets as a moderate risk offender. Sleets filed a timely Notice of Appeal. By Order of this Court, entered September 26, 2000, the case was held in abeyance, pending the final disposition in the Kentucky Supreme Court of three cases involving issues of interpretation and/or constitutionality of KRS 17.500 et. seq., Sexual Offender Registration.

Following the resolution of these cases, this court entered an order to show cause why the appeal should not be summarily affirmed based on the holdings of those cases. Sleets responded that -- with one exception -- all issues raised in his appeal had been disposed of expressly by rendition of the Supreme Court opinions, Hyatt v. Commonwealth, Ky., 72 S.W.3d 566 (2002), and Martinez v. Commonwealth, Ky., 72 S.W.3d 581 (2002).

The one remaining issue is what burden of proof is to be applied in a risk assessment hearing. Sleets argues that the "beyond a reasonable doubt" burden provided for in KRS 500.079 must apply. He bases his argument on the premise that the assessment process is a continuation of the criminal prosecution. Sleets admits that this issue was resolved in Hyatt by inference, and we agree.

In Hyatt, the argument was made that the Commonwealth was required to prove risk classification by clear and convincing evidence. While the statute sets out specific guidelines for the trial judge to follow, the Supreme Court does not specify a standard-of-proof element. Hyatt 72 S.W.3d at 575. The Court did not impose a standard but rather limited its review as to whether

the trial court followed the guidelines set out in the statute. In Hyatt, the Court held that the Sex Offender Registration Statutes are regulatory rather than punitive in nature and purpose. Id. at 573. The Court also held that the risk assessment did not constitute a re-opening of the criminal conviction. However, it was necessarily premised on a criminal conviction since the risk assessment could not arise without the prior sex offense conviction. Id. at 578.

In addressing a separation of powers argument, the court stated: "It is within the power of the legislature to determine what unit of government is best suited to perform certain civil responsibilities." Id. at 579. Based on the preceding analysis, we believe that Hyatt indicates that the risk assessment hearing is a proceeding not requiring the higher standard of proof beyond a reasonable doubt. The trial court was required to follow the specific guidelines of the statute in making a determination of risk. Slets makes no argument that it failed to do so in his case -- nor can we find any error.

For the foregoing reasons, we affirm the order of the Jefferson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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