

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2012-CA-000040-MR

DARRELL REYNOLDS

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT  
HONORABLE GREGORY A. LAY, JUDGE  
ACTION NO. 11-CR-00271

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON, MAZE, AND NICKELL, JUDGES.

NICKELL, JUDGE: Darrell Reynolds brings this appeal after entering a conditional plea of guilty, pursuant to RCr<sup>1</sup> 8.09 for his failure to comply with sex offender registration. He argues that because the Sex Offender Registration Act

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<sup>1</sup> Kentucky Rules of Criminal Procedure.

(SORA)<sup>2</sup> was enacted after he was convicted of the underlying offense, he should not have to comply with its requirements.

On June 13, 1994, a Laurel Circuit Court jury returned a verdict finding Reynolds guilty of first-degree rape.<sup>3</sup> On July 15, 1994, he was sentenced to serve twenty years. SORA became effective the same day he was sentenced.

More than sixteen years later, Reynolds was charged with failure to comply with sex offender registration after failing to report a change of address. His counsel filed a motion “to quash indictment or in the alternative to suppress any information or assertion that defendant was required to register under the Sex Offender Registry Act.” Attached to the motion was a copy of *Commonwealth v. Nash*, 338 S.W.3d 264 (Ky. 2011), an opinion addressing the application and effects of the SORA and its subsequent amendments. Shortly thereafter, Reynolds also filed a *pro se* motion seeking to dismiss the indictment and to be removed from the sex offender registry.

Reynolds ultimately entered a guilty plea described in the final judgment as “conditional based upon defendant’s appeal pursuant to *Commonwealth v. Nash*[.]” The trial court also entered the following agreed findings of fact:

1. The Defendant was tried by a jury in Laurel Circuit Court Action No. 91-CR-125 on June 13, 1994.

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<sup>2</sup> Kentucky Revised Statutes (KRS) 17.500 *et seq.*

<sup>3</sup> KRS 510.040, either a Class A felony or a Class B felony, depending upon the age of the victim and resulting injury.

2. On that date the defendant was adjudged guilty of First Degree Rape and was sentenced to twenty (20) years in a state penitentiary.
3. The Defendant was finally sentenced on July 15, 1994 and was incarcerated at that time.
4. The Defendant was still incarcerated on this charge on July 15, 1998, the date of the 1998 amendment to the Sex Offender Registration Act.

This appeal followed.

As a preliminary matter, we address the Commonwealth's contention that this appeal should be dismissed. RCr 8.09 states in relevant part, "[w]ith the approval of the court a defendant may enter a conditional plea of guilty, reserving in writing the right, on appeal from the judgment, to review of the adverse determination of any specified trial or pretrial motion." The Commonwealth argues dismissal is appropriate because the trial court never issued a ruling on Reynolds's motions to quash or to dismiss the indictment. The final judgment, however, plainly states the guilty plea was conditioned on Reynolds's right to appeal based on the applicability of *Nash* to the facts of his case. Although the motions were never denied by formal court orders, an "adverse determination" of the motions, sufficient to satisfy the requirements of RCr 8.09, is implicit in this judgment.

Reynolds argues that under *Nash*, he is not required to register as a sex offender because he was convicted of first-degree rape before the enactment of the SORA. In *Nash*, the Supreme Court of Kentucky held the defendant was not

required to register because his conviction was secured on December 14, 1993, well before the enactment of the SORA in 1994. The Court explained that in its original incarnation, “[t]he Act only applied to those convicted of a qualifying sex crime after the effective date of the Act, July 15, 1994, regardless of the release date.” *Nash*, 338 S.W.3d at 267. The Court then proceeded to discuss the impact of the amendment of the SORA in 1998:

The principal change . . . was the creation of a classification as to the potential for recidivism. . . . The 1998 Act provided the registration requirements ‘shall apply to persons individually sentenced *or incarcerated* after the effective date of this Act [July 15, 1998].’

*Id.* (internal citations omitted). Since Nash had served out the sentence on his qualifying sex crimes on October 1, 1997, the Court concluded he was, likewise, not required to register under the 1998 amendments to SORA. By contrast, according to the agreed findings of fact entered by the trial court in this case, Reynolds was incarcerated when the 1998 amendments were enacted. Thus, he was required to register.

Finally, although Reynolds has requested that we confine our review to whether he was required to register under the 1994 version of the SORA, the effect of the 1998 amendment renders that issue moot. “Unless there is ‘an actual case or controversy,’ this Court has no jurisdiction to hear an issue and is prohibited from producing mere advisory opinions.” *Medical Vision Group, P.S.C. v. Philpot*, 261 S.W.3d 485, 491 (Ky. 2008) (citing *Commonwealth v. Hughes*, 873 S.W.2d 828, 829 (Ky. 1994)); Ky. Const. § 110.

The judgment of the Laurel Circuit Court is affirmed.

ALL CONCUR.

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