

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-002064-MR

PAUL SUMPTER

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE FRED A. STINE V, JUDGE
ACTION NO. 12-CR-00363

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: DIXON, JONES AND NICKELL, JUDGES.

JONES, JUDGE: This matter is on direct appeal to this Court from a judgment and sentence entered by the Campbell Circuit Court. It arose out of allegations that the Appellant, Paul Sumpter, sexually abused two individuals, P.S. and C.R., during the 1970s and 1980s. During Sumpter's trial, P.S. and C.R. testified about various sex acts Sumpter performed on them over the course of several years.

Ultimately, the jury convicted Sumpter of: 1) second-degree sodomy of C.R.; 2)

third-degree sodomy of C.R.; 3) third-degree rape of C.R.; 4) first-degree sexual abuse of P.S.; 5) third-degree sodomy of P.S.; and 6) third-degree rape of P.S.

Sumpter was sentenced to a total of 18 years.

On appeal Sumpter argues that the instructions given to his jury violated his right to a unanimous verdict because they failed to differentiate factually between the alleged instances of sexual abuse. In light of *Kingrey v. Commonwealth*, 396 S.W.3d 824, 830 (Ky. 2013), rendered during the pendency of this appeal, the Commonwealth concedes that the instructions in this case were deficient and deprived *Sumpter* of a right to a unanimous verdict, a fundamental error giving rise to manifest injustice. Rightly, the Commonwealth agrees with *Sumpter* that the erroneous instructions require us to reverse Sumpter's convictions and remand for further proceedings. This renders the remainder of Sumpter's arguments moot.

Accordingly, for the reasons set forth above, we reverse and remand.

ALL CONCUR.

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