

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-000596-MR

MICHAEL WILLOUGHBY

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 13-CI-00978

COMMONWEALTH OF KENTUCKY,
KENTUCKY STATE POLICE

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE, D. LAMBERT AND MAZE, JUDGES.

MAZE, JUDGE: Michael Willoughby appeals from an order of the Franklin Circuit Court dismissing his declaratory judgment action against the Kentucky State Police. Willoughby sought a declaration that he was only subject to the ten-year registration requirement under the 1994 version of the Sexual Offender Registration Act (SORA) and not the lifetime registration requirement imposed by

the 2000 version. We agree with the circuit court that the registration requirement is based upon the law in effect when Willoughby was most recently released, notwithstanding any period of registration during an earlier release. Hence, we affirm.

The underlying facts of this action are not in dispute. In 1991, a Clark County grand jury indicted Willoughby for first-degree rape, first-degree sodomy, and first-degree sexual abuse. The indictment charged that Willoughby engaged in the activity with a victim who was less than twelve years of age. On February 24, 1992, Willoughby entered a guilty plea to second-degree rape and first-degree sexual abuse. Pursuant to that plea, the court sentenced Willoughby to a total of ten years' imprisonment.

In June of 1995, Willoughby was released on parole. At that time, he completed a Sex Offender Registry Form which indicated that he was required to register for a period of ten years, beginning from his maximum release date of February 23, 2002. Willoughby remained registered until June 18, 1998, when his parole was revoked and he was returned to prison.

Willoughby was released from prison again on May 1, 2001. Prior to his release, he signed another Sex Offender Registry Form which indicated that he was required to register as a lifetime registrant. On January 9, 2013, he sent a request to the Kentucky State Police to modify his registration status. Shortly thereafter, he filed an action in circuit court seeking a declaration that he is only required to be registered as a sex offender for a period of ten years.

The State Police filed a motion to dismiss, arguing that the registration period under SORA is determined by the most-recent release date. Based upon *Buck v. Commonwealth*, 308 S.W.3d 661 (Ky. 2010), the trial court agreed, holding that Willoughby is subject to lifetime registration as a sex offender. Willoughby now appeals.

In *Buck v. Commonwealth, supra*, the Kentucky Supreme Court addressed a substantially similar situation to the current case. In 1985, Buck was convicted of a sexual offense and received a probated three-year sentence. Two years later, Buck was convicted of two additional unrelated felonies and sentenced to serve 23 years for all three convictions. In 1997, Buck was granted parole, but he was returned to prison due to a parole violation in February 2000. After a brief release on parole in 2001-2002, Buck was granted parole in August 2005. Finally, in 2006, Buck was charged with failure to register as a sexual offender under the 2006 amendments to SORA. *Id.* at 664.

Buck argued that SORA's registration requirements could not be retroactively applied to him based upon offenses occurring prior to the effective date of any of the versions of SORA. The Kentucky Supreme Court disagreed, concluding that the registration requirement of SORA did not impose an *ex post facto* punishment. *Id.* at 665. The Court further held that Buck was subject to the registration requirements in effect at the time of his release from prison in 2005. *Id.* at 666-67.

As was the case in *Buck*, the original 1994 version of SORA did not apply to Willoughby because it applied only to those convicted after the effective date of the act. 1994 Kentucky Acts (Ky. Acts) ch. 392, § 6. However, when Willoughby was released in 1995, the Parole Board erroneously required him to register as a sex offender. Willoughby argues that the 2000 amendments to SORA cannot apply to persons who became registrants prior to that version's effective date. *Dickerson v. Commonwealth*, 174 S.W.3d 451, 459-60 (Ky. 2005). Since he actually registered as a sex offender in 1995, Willoughby contends that the subsequently enacted version of SORA does not apply to him.

Nevertheless, Willoughby was reincarcerated for a parole violation on June 18, 1998. Upon his release from prison on May 1, 2001, Willoughby was subject to the 2000 version of SORA, which required registration upon "release by the court, the parole board, the cabinet, or any detention facility." 2000 Ky. Acts ch. 401, § 16(2) (codified at Kentucky Revised Statutes (KRS) 17.510(2)). As in *Buck*, Willoughby was required to become a registrant in 2001, even though he had been registered during his earlier parole. Therefore, we agree with the circuit court that Willoughby is subject to the lifetime registration requirement of KRS 17.520, and the court properly dismissed his declaratory judgment action.

Accordingly, the judgment of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Bradley Fox
Covington, Kentucky

BRIEF FOR APPELLEE:

Graham Gray
Heather C. Wagers
Frankfort, Kentucky