

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-001380-MR

RICKY ROYCE

APPELLANT

ON REMAND FROM KENTUCKY SUPREME COURT
2009-SC-000539-DG

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JAMES D. ISHMAEL, JR., JUDGE
ACTION NO. 07-CR-01579

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: MOORE AND WINE, JUDGES; HENRY, SENIOR JUDGE.

MOORE, JUDGE: This case is before us on remand from the Kentucky Supreme Court for further consideration in light of that Court's recent decision in *Buck v. Commonwealth*, 308 S.W.3d 661 (Ky. 2010). Upon further consideration, we affirm the decision of the Fayette Circuit Court.

Ricky Royce was convicted of a sex offense in 1997. Royce was released from prison in 2001, and he registered as a sex offender in 2001. Subsequently, but approximately three years prior to his indictment in the present case, Royce was convicted of failing to register as a sex offender.

Then, in this case, he was indicted pursuant to KRS¹ 17.510 for failing to register as a sex offender. Royce moved to dismiss the indictment against him, asserting that KRS 17.510 was unconstitutional. The circuit court found that the sex offender registration law was constitutional. Royce entered a conditional guilty plea to the charge of failing to comply with the sex offender registration law, subsequent offense, as set forth at KRS 17.510. He conditioned his plea on the right to appeal the circuit court's denial of his motion challenging the constitutionality of KRS 17.510.

Royce appealed to this Court, contending that the 2006 amendment to KRS 17.510(11) should not apply to him because it is unconstitutional, in that it violates the Ex Post Facto Clause. He also asserted that the decision in *Hyatt v. Commonwealth*, 72 S.W.3d 566 (Ky. 2002), does not apply to the 2006 amendment to KRS 17.510(11) because *Hyatt* concerned an earlier version of the sex offender registration laws. This Court held that the 2000 amendments to the sex offender registration laws were applicable in this case, that Royce's indictment under the 2006 amendments was void *ab initio*, and therefore, that the indictment had to be

¹ Kentucky Revised Statute.

dismissed. The Court further noted that if Royce was to be prosecuted regarding the alleged violation of KRS 17.510, then it must be under the 2000 version.

The Kentucky Supreme Court subsequently entered an opinion and order in this case granting discretionary review, vacating this Court's prior decision, and remanding the case back to this Court for further consideration in light of *Buck*.

In 2006, Kentucky's sex offender registration laws, KRS 17.500, *et seq.*, were amended. The prior version of KRS 17.510(11), which was enacted in 2000, provided that a person who violated KRS 17.510 was guilty of a Class D felony. However, the 2006 amendments to KRS 17.510 provided that a person who violated that statute was "guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense." KRS 17.510(11) (Baldwin 2006). Royce was evidently indicted under the 2006 version of KRS 17.510(11), because his indictment provided that his violation of that statute was a Class C Felony.

Royce claims that the 2006 amendment to KRS 17.510(11) should not apply to him because it violates the Ex Post Facto Clause. However, pursuant to the holding in *Buck*, the 2006 amendment to the Sex Offender Registration Act enhancing the penalty for a second or subsequent offense of failing to register does not violate the Ex Post Facto Clause. *See Buck*, 308 S.W.3d at 667-668.

Additionally, Royce asserts that *Hyatt* does not apply to the 2006 amendment to KRS 17.510(11) because *Hyatt* concerned an earlier version of the sex offender registration laws. Yet, the Kentucky Supreme Court held in *Buck* that

there was nothing in the 2006 amendment that required the Court to depart from its holding in *Hyatt*. See *Buck*, 308 S.W.3d at 667-68.

Accordingly, the Fayette Circuit Court's judgment is affirmed.

ALL CONCUR.

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