

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-09-1150

Appellee

Trial Court No. CR0200901323

v.

Larry Hoselton

DECISION AND JUDGMENT

Appellant

Decided: March 25, 2011

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Brenda J. Majdalani, Assistant Prosecuting Attorney, for appellee.

Brian J. Hoch, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas which sentenced appellant, pursuant to a statutory enhancement provision set forth in R.C. 2950.99, to a mandatory three-year term of incarceration on one count of failure

to verify address, in violation of R.C. 2950.06. For the reasons set forth below, this court reverses the judgment of the trial court.

{¶ 2} Appellant, Larry Hoselton, sets forth the following sole assignment of error:

{¶ 3} "THE TRIAL COURT ERRED WHEN IT IMPROPERLY SENTENCED APPELLANT TO A THREE (3) YEAR TERM OF INCARCERATION PURSUANT TO ORC §2950.99 BECAUSE IT IMPROPERLY CONSTRUED AN ATTEMPTED FAILURE TO REPORT CONVICTION OF ORC §2950.06 AS A PREVIOUS CONVICTION FOR PURPOSES OF ORC §2950.99."

{¶ 4} The following undisputed facts are relevant to the issue raised on appeal. As a result of a prior qualifying conviction, appellant was required to register as a sex offender and abide by the accompanying mandatory reporting requirements established by R.C. 2950.06. Appellant was subsequently convicted of an attempted failure to verify his residential address as required.

{¶ 5} On December 16, 2008, appellant was released from incarceration. Appellant furnished a residential address as required. A subsequent verification check of the address furnished by appellant established that he was not residing at the address he had provided. Appellant failed to provide an accurate, current address as required due to his sex offender status.

{¶ 6} On March 30, 2009, appellant, represented by counsel, entered a plea of no contest to one count of failure to verify his address, in violation of R.C. 2950.06. On April 29, 2009, appellant was sentenced to a mandatory three-year term of incarceration

pursuant to the sentencing enhancement provisions set forth in R.C. 2950.99. This appeal ensued.

{¶ 7} In his sole assignment of error, appellant maintains that the trial court erred in imposing the mandatory term of incarceration pursuant to the enhancement provisions of R.C. 2950.99. In support, appellant contends that the language set forth in the enhancement provision makes clear that it is only applicable to a prior conviction of failure to report, but does not encompass a prior conviction for an attempted failure to report. As such, appellant's position is that his enhanced sentencing was in breach of the plain meaning doctrine of statutory interpretation.

{¶ 8} R.C. 2950.99(A)(2)(b) establishes in pertinent part, "if the offender previously has been convicted of or pleaded guilty to, or previously has been adjudicated delinquent child for committing, a violation of a prohibition in §§2950.04, 2950.041, 2950.05, or 2950.06 * * * the court imposing a sentence upon the offender shall impose a definite prison term of no less than three (3) years." Based upon appellant's original conviction which triggered the sex offender status and subsequent conviction on one count of failure to report, a violation of R.C. 2950.06, this enhancement provision is potentially applicable for sentencing purposes.

{¶ 9} In order to assess the propriety of appellant's claim that the enhancement provision is inapplicable to this case, we are guided by the plain meaning doctrine. The plain meaning doctrine establishes that courts have no authority to bypass or modify the plain meaning of unambiguous legislative language. The practical implication is that

judicial application must be constrained to the confines of the plain meaning of the precise language at issue. *State v. Sylvania Twp.*, 6th Dist. No. L-06-1395, 2007-Ohio-3108. In its recent assessment of this precise issue, the First District Court of Appeals clearly and concisely ruled in relevant part, "R.C. 2950.99(A)(2)(b) requires a court to impose a mandatory three-year prison term on repeat nonreporting offenders. But the statute contains no provision requiring a mandatory term for a defendant convicted only of an attempted offense. Applying the plain and unambiguous meaning of the statute to the facts of this case, we hold that the trial court erred when it sentenced Wilson to mandatory incarceration under R.C. 2950.99(A)(2)(b)."

{¶ 10} We are similarly persuaded by this line of reasoning in the instant case. The record reflects that appellant had no prior conviction of failure to report. On the contrary, the prior conviction was for the offense of an attempted failure to report. We note that the plain and unambiguous language set forth in R.C. 2950.99(A)(2)(b) does not state enhancement applicability to both violations and attempted violations of the enumerated statutes. Rather, the language is clearly and expressly limited to actual violations themselves.

{¶ 11} Given the plain and unambiguous meaning of the relevant statutory enhancement language, in conjunction with the facts of this case, we find that appellant's conviction is not encompassed by the enhancement provisions for past violations given that his past conviction was for an attempted violation, thereby removing it from the

realm of R.C. 2950.99(A)(2)(b) pursuant to the express, plain language of that sentencing enhancement provision.

{¶ 12} Based upon the foregoing, we find appellant's sole assignment of error well-taken. The judgment of the Lucas County Court of Common Pleas is reversed. We remand this matter to the trial court for resentencing in accordance with this decision.

Appellee is ordered to pay the cost of this appeal pursuant to App.R. 24.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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