

[Cite as *State v. Hickman*, 2010-Ohio-5548.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

| | | |
|----------------------|---|---------------------------|
| State of Ohio, | : | |
| | : | |
| Plaintiff-Appellee, | : | |
| | : | No. 09AP-617 |
| v. | : | (C.P.C. No. 72CR-08-1185) |
| | : | |
| William J. Hickman, | : | (REGULAR CALENDAR) |
| | : | |
| Defendant-Appellant. | : | |

D E C I S I O N

Rendered on November 16, 2010

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

Yeura R. Venters, Public Defender, and *John W. Keeling*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Defendant-appellant, William J. Hickman ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which denied his petition to contest his reclassification as a Tier III sex offender. For the following reasons, we reverse the trial court's judgment and remand the matter with instructions.

{¶2} Appellant was previously convicted of rape and related offenses, and he is in prison for his crimes. In 2001, the trial court designated him a sexual predator pursuant to the sex offender classification laws in effect at that time. Afterward, the sex offender classification laws were amended by S.B. 10 in response to the federal Adam Walsh Act. S.B. 10 divides sex offenders into three tiers based solely on the crime committed, and it directed the attorney general to reclassify sex offenders who had already been classified by court order under prior law. The attorney general reclassified appellant a Tier III sex offender under S.B. 10. Appellant filed a petition to contest the reclassification, claiming that it was unconstitutional, including under the separation-of-powers doctrine in the state constitution. The trial court rejected appellant's constitutional challenges and denied his petition to contest reclassification.

{¶3} Appellant appeals, raising four assignments of error:

ASSIGNMENT OF ERROR NUMBER ONE

THE TRIAL COURT ERRED WHEN IT HELD THAT THE RECLASSIFICATION PROVISIONS IN THE ADAM WALSH ACT DID NOT VIOLATE THE SEPARATION-OF-POWERS DOCTRINE. STATE V. BODYKE, [126 OHIO ST.3d 266], 2010-OHIO-2424, [933 N.E.2d 753], APPROVED AND FOLLOWED.

ASSIGNMENT OF ERROR NUMBER TWO

THE TRIAL COURT ERRED WHEN IT HELD THAT SENATE BILL 10, AS APPLIED TO THOSE CONVICTED OF OFFENSES COMMITTED BEFORE ITS EFFECTIVE DATE, BUT SENTENCED AFTER THAT DATE, DID NOT VIOLATE THE EX POST FACTO PROHIBITION OF ARTICLE I, SECTION 10 OF THE UNITED STATES CONSTITUTION.

ASSIGNMENT OF ERROR NUMBER THREE

THE TRIAL COURT ERRED WHEN IT HELD THAT THE APPLICATION OF THE PROVISIONS OF SENATE BILL 10 TO THOSE CONVICTED OF OFFENSES COMMITTED BEFORE ITS EFFECTIVE DATE, BUT SENTENCED AFTER THAT DATE, DID NOT VIOLATE THE BAN ON RETROACTIVE LAWS SET FORTH IN ARTICLE II, SECTION 28, OF THE OHIO CONSTITUTION.

ASSIGNMENT OF ERROR NUMBER FOUR

RETROACTIVE APPLICATION OF S.B. 10 VIOLATES THE DOUBLE JEOPARDY CLAUSES OF THE UNITED STATES CONSTITUTION'S FIFTH AMENDMENT AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION.

{¶4} In his first assignment of error, appellant argues that his reclassification under S.B. 10 violates the separation-of-powers doctrine. We agree.

{¶5} S.B. 10, through R.C. 2950.031 and 2950.032, directed the attorney general to reclassify sex offenders who had already been judicially classified under prior law. R.C. 2950.031 would apply if the sex offender had registered an address for his residence, school or employment, and R.C. 2950.032 would apply if, like appellant, the offender is in prison for a sex crime. According to the Supreme Court of Ohio, however, those statutes violate the separation-of-powers doctrine in the state constitution because they enabled the executive branch to reopen and review past decisions of the judicial branch. *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, paragraphs two and three of the syllabus. Consequently, the court severed R.C. 2950.031 and 2950.032 from S.B. 10. *Bodyke* at ¶66. This court has repeatedly recognized that, pursuant to *Bodyke*, reclassifications made under the severed statutes are to be vacated, and the prior judicial classifications are to be reinstated. See *State v. Watkins*, 10th Dist. No. 09AP-669, 2010-Ohio-4187, ¶¶12-13; *State v. Houston*, 10th Dist. No.

09AP-592, 2010-Ohio-4374, ¶12-13; *State v. Jackson*, 10th Dist. No. 09AP-687, 2010-Ohio-4375, ¶10-11.

{¶6} Because appellant was reclassified a Tier III sex offender under R.C. 2950.032, which *Bodyke* deemed unconstitutional and unenforceable, the reclassification cannot stand. Therefore, we sustain appellant's first assignment of error. His remaining three assignments of error are moot, given our decision on his first assignment of error, and we need not address them. See App.R. 12(A)(1)(c).

{¶7} To conclude, we overrule appellant's second, third, and fourth assignments of error as moot, but we sustain his first assignment of error. Consequently, we reverse the judgment of the Franklin County Court of Common Pleas and remand this cause to that court with instructions to (1) vacate appellant's Tier III sex offender classification under S.B. 10, and (2) reinstate his prior classification as a sexual predator.

*Judgment reversed and
cause remanded with instructions.*

McGRATH and CONNOR, JJ., concur.
