

[Cite as *Jackson v. State*, 2011-Ohio-2047.]

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Jonathan Jackson,	:	
	:	
Petitioner-Appellant,	:	
	:	
v.	:	No. 10AP-644
	:	(C.P.C. No. 10MS-04-234)
State of Ohio,	:	
	:	(REGULAR CALENDAR)
Respondent-Appellee.	:	

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D E C I S I O N

Rendered on April 28, 2011

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

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

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APPEAL from the Franklin County Court of Common Pleas.

CONNOR, J.

{¶1} Petitioner-appellant, Jonathan Jackson ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas dismissing his petition to contest his sexual offender reclassification as a Tier III sex offender. For the reasons that follow, we reverse and remand this matter with instructions.

{¶2} On April 18, 2005, appellant was convicted of attempted rape, burglary, disrupting public services, and domestic violence. Following a hearing, the Summit County Court of Common Pleas classified appellant as a sexually oriented offender under

Megan's Law. This classification required appellant to comply with annual residence address registration and verification for ten years following his release from prison.

{¶3} In 2006, Congress passed the Adam Walsh Child Protection and Safety Act, which created national standards for sexual offender classification, registration, and community notification. As a result, Ohio reorganized its sexual offender registration scheme in 2007 by enacting its version of the Adam Walsh Act ("AWA"), also known as S.B. No. 10, which became effective on July 1, 2007 and January 1, 2008. S.B. No. 10 repealed the three-level scheme set forth under Megan's Law ("sexually oriented offender," "habitual sexual offender," and "sexual predator"), and replaced it with a new three tier system (Tier I, Tier II, and Tier III).

{¶4} As a result of the enactment of S.B. No. 10, appellant was reclassified by Ohio's attorney general as a Tier III sexual offender. Under this new classification, appellant was required to personally register with the local sheriff every 90 days for life and was also subject to community notification provisions. Appellant, who had been released from prison and was now living in Franklin County, filed a petition to contest reclassification pursuant to R.C. 2950.031 and 2950.032 and also requested a hearing as to the applicability of the new registration requirements. Appellant raised a variety of constitutional challenges to the AWA. Among those challenges was the assertion that Ohio's AWA violated the separation-of-powers doctrine.

{¶5} Subsequent to the filing of appellant's petition, the Supreme Court of Ohio considered the constitutionality of Ohio's AWA. On June 3, 2010, the court determined "R.C. 2950.031 and 2950.032, the reclassification provisions in the AWA, are

unconstitutional because they violate the separation-of-powers doctrine." *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, ¶2.

{¶6} After concluding that R.C. 2950.031 and 2950.032 were unconstitutional, the Supreme Court of Ohio determined the remedy was to sever those provisions. "R.C. 2950.031 and 2950.032 are severed and \* \* \* after severance, they may not be enforced. R.C. 2950.031 and 2950.032 may not be applied to offenders previously adjudicated by judges under Megan's Law, and the classifications and community-notification and registration orders imposed previously by judges are reinstated." *Id.* at ¶66.

{¶7} Based upon this determination, the trial court in the instant case sua sponte dismissed appellant's petition as moot just five days after the decision in *Bodyke*, concluding that the petition no longer presented a justiciable issue because *Bodyke* provided appellant with the relief he was seeking.

{¶8} Appellant filed a timely appeal and now raises one assignment of error for our review:

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED WHEN IT DISMISSED THE APPELLANT'S PETITION ON THE GROUNDS THAT A FAVORABLE SUPREME COURT RULING IN ANOTHER CASE, IN WHICH THE APPELLANT WAS NOT A PARTY, RENDERED THE PETITION MOOT. THE SUPREME COURT RULING RENDERED THE APPELLANT'S PETITION MERITORIOUS, NOT MOOT, AND RELIEF SHOULD HAVE BEEN GRANTED ACCORDINGLY. THE TRIAL COURT [FURTHER] ERRED WHEN IT DISMISSED THE PETITION, SUA SPONTE, WITHOUT GIVING ANY PARTIES AN OPPORTUNITY TO BE HEARD ON THE ISSUE.

{¶9} In his sole assignment of error, appellant argues the decision in *Bodyke* renders his petition meritorious, rather than moot, and as a result, the trial court should

have granted him relief pursuant to *Bodyke* instead of dismissing his petition. Appellant further argues the trial court erred in dismissing his petition without first holding a hearing.

{¶10} While the State of Ohio concedes the trial court erred in dismissing the petition on "mootness" grounds, it argues the dismissal was proper on alternative grounds. The State of Ohio submits that appellant cannot obtain relief pursuant to R.C. 2950.031 and 2950.032, due to the Supreme Court of Ohio's subsequent decision in *Chojnacki v. Cordray*, 126 Ohio St.3d 321, 2010-Ohio-3212. In *Chojnacki*, R.C. 2950.031 and 2950.032 were facially severed in their entirety, leaving no part of either statute to be enforced. As a result, the State of Ohio argues the petition contest procedures created under R.C. 2950.031 and 2950.032 have also been severed, thereby leaving the trial court without authority to rule on the reclassification, and thus making dismissal of the petition the proper result.

{¶11} However, we have repeatedly rejected this argument and have instead recognized that, as a result of *Bodyke*, reclassifications made under the severed statutes must be vacated and the prior judicial classifications must be reinstated. See *State v. Lawson*, 10th Dist. No. 09AP-672, 2011-Ohio-1255; *State v. Miliner*, 10th Dist. No. 09AP-643, 2010-Ohio-6117; and *State v. Hickman*, 10th Dist. No. 09AP-617, 2010-Ohio-5548. See also *Cook v. State of Ohio*, 10th Dist. No. 10AP-641, 2011-Ohio-906 (case remanded to reinstate prior classification; individuals who filed their petitions prior to the ruling in *Bodyke* are entitled to the same relief granted in *Bodyke*); *Powell v. State of Ohio*, 10th Dist. No. 10AP-640, 2011-Ohio-1382, ¶2 ("because the Supreme Court of Ohio did not dismiss the many cases pending before it at the time it decided [*Bodyke*], the Supreme Court did not intend to nullify the petition process as to cases pending when

*Bodyke* was decided"); *State v. Ogden*, 10th Dist. No. 09AP-640, 2011-Ohio-1589 (reclassification made under the severed statutes must be vacated; prior judicial classification was ordered to be reinstated); and *Edwards v. State of Ohio*, 10th Dist. No. 10AP-645, 2011-Ohio-1492 (sua sponte dismissal of petition as moot was error because appellant was not provided with the relief requested).

{¶12} Moreover, approximately two months after the issuance of its decision in *Bodyke*, the Supreme Court of Ohio reversed and remanded numerous cases to various trial courts after several courts of appeals had rejected constitutional challenges to the AWA based on separation-of-powers grounds. See *In re Sexual Offender Reclassification Cases*, 126 Ohio St.3d 322, 2010-Ohio-3753. Notably, the Supreme Court of Ohio did not dismiss these petitions, but rather remanded the cases for further proceedings, if any, as necessitated by *Bodyke*. In several cases, the court specifically remanded to the trial courts with instructions to reinstate the original classification, registration and reporting requirements.

{¶13} Based upon the foregoing, we find appellant's reclassification as a Tier III offender pursuant to R.C. 2950.031 was unconstitutional, and the trial court erred in dismissing appellant's petition without affording him the requested relief to which he is entitled pursuant to *Bodyke*.

{¶14} Appellant has also asserted the trial court erred in sua sponte dismissing his petition without first holding a hearing. Under R.C. 2950.031(E) a petitioner is entitled, as a matter of right, to a court hearing to contest the application of the new classification as well as its registration requirements. Thus, under this statute, a court could not deny a petition without holding a hearing. *Hosom v. State of Ohio*, 10th Dist. No. 10AP-671,

2011-Ohio-1494, ¶10. However, to the extent the State of Ohio contends it too is entitled to a statutorily-mandated hearing to present various arguments, we disagree. See *id.* at ¶11 ("[b]ecause the petition process set forth in R.C. 2950.031 and 2950.032 was severed, any issues relating to that petition process, including whether the statute provides the state with the same right to a hearing as a petitioner, no longer constitute any justiciable controversy and are therefore moot.").

{¶15} Accordingly, we sustain appellant's sole assignment of error.

{¶16} Therefore, we reverse the judgment of the Franklin County Court of Common Pleas and remand this matter to that court with instructions to: (1) vacate appellant's Tier III sexual offender classification pursuant to the AWA, and (2) reinstate his prior classification as a sexually oriented offender, as well as his prior registration requirements.

*Judgment reversed;  
cause remanded with instructions.*

BRYANT, P.J., and TYACK, J., concur.

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