

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Lawrence J. Trischler,	:	
	:	
Petitioner-Appellee,	:	
	:	
v.	:	No. 10AP-969
	:	(C.P.C. No. 89 CR 1395)
State of Ohio,	:	(REGULAR CALENDAR)
	:	
Respondent-Appellant.	:	

D E C I S I O N

Rendered on June 23, 2011

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

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

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, P.J.

{¶1} Respondent-appellant, State of Ohio, appeals from a judgment of the Franklin County Court of Common Pleas that granted the petition of petitioner-appellee, Lawrence J. Trischler, to vacate his classification as a Tier III sex offender and to reinstate his prior classification and registration requirements. Because the trial court properly vacated petitioner's classification as a Tier III sex offender and reinstated his prior classification and registration requirements, we affirm.

I. Facts and Procedural History

{¶2} Following a mistrial arising from a hung jury, petitioner was retried in December 1989 and was found guilty of one count of rape in violation of R.C. 2907.02 and one count of sexual battery in violation of R.C. 2903.03. Determining the two offenses should be merged for purposes of sentencing, the trial court imposed a sentence of 8 to 25 years for rape. This court affirmed. *State v. Trischler* (Feb. 21, 1991), 10th Dist. No. 90AP-92.

{¶3} As a result of a February 3, 1997 recommendation from the warden of Madison Correctional Institution, a hearing was held in the trial court to determine whether petitioner was a sexual predator pursuant to former R.C. 2950.09 and the sexual offender registration laws known generally as Megan's Law. On determining petitioner was not a sexual predator, the trial court filed a decision and entry on June 1, 1998 denying the Ohio Department of Rehabilitation and Corrections' recommendation. As a result, petitioner was classified as a sexually oriented offender.

{¶4} In 2006, Congress passed the Adam Walsh Child Protection and Safety Act ("AWA"). See 42 U.S.C. 16901, et seq. The AWA created national standards for sexual offender classifications, including registration and community notification requirements. Ohio enacted its version of the AWA in Am.Sub.S.B. No. 10, effective January 1, 2008. Ohio's AWA repealed Megan's Law and its three classifications, "sexually oriented offender," "habitual sexual offender," and "sexual predator," and replaced them with a three-tiered system.

{¶5} R.C. 2950.031 of Ohio's AWA required the attorney general, using the three-tiered system, to reclassify Megan's Law sexual offenders who had a registered

address; R.C. 2950.032 required the attorney general, using the same three tiers, to reclassify such sexual offenders serving a prison term. The attorney general further was required to send notification letters to offenders regarding their new tier classification and duties.

{¶6} On November 30, 2007, petitioner learned the office of the Ohio Attorney General had reclassified him pursuant to Ohio's AWA as a Tier III sex offender, requiring him to register personally with the sheriff every 90 days for life and subjecting him to community notification provisions. As a result, petitioner filed a petition on December 31, 2007 to contest his reclassification, contending the reclassification violated, among others, the separation of powers doctrine under the United States and Ohio Constitutions. On petitioner's motion, the trial court stayed community notification under the Attorney General's reclassification pending the Supreme Court of Ohio's decision in *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424.

{¶7} Decided on June 3, 2010, *Bodyke* concluded "R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders who have already been classified by court order under former law, impermissibly instruct the executive branch to review past decisions of the judicial branch and thereby violate the separation-of-powers doctrine." *Id.* at paragraph two of the syllabus. In response to *Bodyke*, the trial court issued a decision and entry ordering the stay previously imposed be lifted, granting petitioner's petition contesting his reclassification, vacating the reclassification, and reinstating his prior classification and registration orders under Megan's Law.

II. Assignments of Error

{¶8} The state appeals, assigning three errors:

FIRST ASSIGNMENT OF ERROR

THE COMMON PLEAS COURT ERRED IN GRANTING RELIEF ON THE BASIS OF A PETITION THAT WAS FILED PURSUANT TO A SPECIAL STATUTORY PROCEEDING THAT HAS NOW BEEN SEVERED IN ITS ENTIRETY BY THE OHIO SUPREME COURT.

SECOND ASSIGNMENT OF ERROR

THE COMMON PLEAS COURT ERRED IN AWARDING RELIEF BASED ON *STATE v. BODYKE* IN THE ABSENCE OF A PRIOR JUDICIAL CLASSIFICATION.

THIRD ASSIGNMENT OF ERROR

THE COMMON PLEAS COURT ERRED IN DECLARING THAT "THE REQUIREMENTS IMPOSED UPON THE PETITIONER BY THE ADAM WALSH ACT ARE A NULLITY."

{¶9} This court recently addressed all three of the state's assignments of error in *State v. Johnson*, 10th Dist No. 10AP-932, 2011-Ohio-2009, overruling all of them. For the reasons set forth in *Johnson*, we do likewise here.

III. First Assignment of Error – Basis for Reclassification

{¶10} The state's first assignment of error asserts that because the Supreme Court in *Bodyke* severed R.C. 2950.031 and 2950.032, the trial court had no jurisdiction to consider petitioner's petition after lifting the stay.

{¶11} Although *Bodyke* concluded the appropriate remedy was to sever R.C. 2950.031 and 2950.032 and to reinstate those defendants to their prior classifications, the state questioned the Supreme Court's resolve on those issues, noting the alignment of

justices in *Bodyke*. Were any doubt to exist whether *Bodyke* found R.C. 2950.031 and 2950.032 to violate the separation of powers doctrine and severed those provisions, the Supreme Court made clear in *Chojnacki v. Cordray*, 126 Ohio St.3d 321, 2010-Ohio-3212, that *Bodyke* "severed R.C. 2950.031 and 2950.032, the reclassification provisions of the Adam Walsh Act, and held that after severance, those provisions could not be enforced." *Id.* at ¶5. Because the attorney general reclassified petitioner as a Tier III sex offender under provisions rendered unconstitutional and unenforceable, the reclassification cannot stand.

{¶12} As to the remedy post-*Bodyke*, this court addressed the state's same argument in earlier cases and concluded "appellant's reclassification under the severed statute must be vacated and his prior judicial classification must be reinstated." *State v. Miliner*, 10th Dist. No. 09AP-643, 2010-Ohio-6771, ¶15; *Cook v. Ohio*, 10th Dist. No. 10AP-641, 2011-Ohio-906, ¶7-10; *State v. Hickman*, 10th Dist. No. 09AP-617, 2010-Ohio-5548, ¶5 (stating "[t]his 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"); *State v. Watkins*, 10th Dist. No. 09AP-669, 2010-Ohio-4187, ¶12-13, discretionary appeal not allowed, 128 Ohio St.3d 1413, 2011-Ohio-828; *State v. Houston*, 10th Dist. No. 09AP-592, 2010-Ohio-4374, ¶12-13, discretionary appeal not allowed, 128 Ohio St.3d 1446, 2011-Ohio-1618; *State v. Jackson*, 10th Dist. No. 09AP-687, 2010-Ohio-4375, ¶10-11, discretionary appeal not allowed, 128 Ohio St.3d 1446, 2011-Ohio-1618. See also *Majewski v. State*, 8th Dist. No. 92372, 2010-Ohio-3178, ¶13, discretionary appeal not allowed, 127 Ohio St.3d 1462, 2010-Ohio-6008 (reinstating the petitioner's original classification was "consistent with *Bodyke*"); *State v.*

Robins, 2d Dist. No 23437, 2010-Ohio-2842, ¶17 (stating that "[s]ince R.C. 2950.031 and 2950.032 have been excised in the statutory scheme, Robins' previous classification as a sexually oriented offender is reinstated").

{¶13} Having "consistently recognized that, notwithstanding the severance of the statutory provisions under which the reclassification petitions were filed, petitioners such as appellee are entitled to orders directing their return to those previous classifications," we do so again. *Johnson* at ¶8, quoting *Hosom v. State*, 10th Dist. No. 10AP-671, 2011-Ohio-1494, ¶8. Accordingly, the trial court did not err in granting petitioner's petition challenging his reclassification. The state's first assignment of error is overruled.

IV. Second Assignment of Error – Prior Classification

{¶14} The state's second assignment of error contends that because petitioner's prior classification arose as a matter of law, not through judicial determination, he is not entitled to relief under *Bodyke*.

{¶15} As in *Johnson*, "we question the state's argument that [petitioner's] designation as a sexually oriented offender was not the result of a judicial determination." *Id.* at ¶14. To the contrary, the effect of the trial court's determining petitioner was not a sexual predator was petitioner's designation as a sexually oriented offender. "Because [petitioner's] classification as a sexually oriented offender resulted from a specific judicial determination," petitioner "was among those offenders to which *Bodyke's* concern regarding separation of powers would apply." *Id.*

{¶16} Moreover, even if petitioner's classification as a sexually oriented offender "did not arise from a specific judicial determination to which *Bodyke* would apply, we have nevertheless recognized that offenders whose pre-Adam Walsh Act classification arose

purely as a matter of law still must receive the benefit of the *Bodyke* remedy returning those offenders to their pre-Adam Walsh Act classifications" since *Bodyke* completely severed the statutory provisions governing attorney general reclassification. *Id.* at ¶15, citing *State v. Hazlett*, 191 Ohio App.3d 105, 2010-Ohio-6119 and *Core v. Ohio*, 10th Dist. No. 09AP-192, 2010-Ohio-6292.

{¶17} Because the trial court did not err in rejecting the state's contention that *Bodyke* does not apply to the facts of petitioner's case, we overrule the state's second assignment of error.

V. Third Assignment of Error – Requirements under AWA as a Nullity

{¶18} The state's third assignment of error contends some provisions of the AWA would apply to petitioner regardless of his classification. Accordingly, the state argues, the trial court erred in declaring all such provisions to be a nullity with respect to petitioner.

{¶19} The Supreme Court of Ohio recently clarified in *State v. Gingell*, 128 Ohio St.3d 444, 2011-Ohio-1481, "that *Bodyke* not only applied to return pre-Adam Walsh Act offenders to their prior classifications, but also returned those offenders to their pre-Adam Walsh Act reporting requirements." *Johnson* at ¶18; *Gingell* at ¶8 (concluding that "pursuant to *Bodyke*, *Gingell*'s original classification under Megan's Law and the associated community-notification and registration order were reinstated"). As *Bodyke* and *Gingell* make clear, "none of the AWA provisions, including the new reporting requirements" can be applied to petitioner. *Johnson* at ¶19 (noting "the state's argument that some new Adam Walsh Act reporting requirements apply to [petitioner] is without merit"). The trial court properly reinstated petitioner's prior classification and registration orders under Megan's Law.

{¶20} Accordingly, the state's third assignment of error is overruled.

{¶21} Having overruled all three of the state's assignments of error, we affirm the judgment of the trial court.

Judgment affirmed.

SADLER and DORRIAN, JJ., concur.
