

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-679
Michael A. French,	:	(C.P.C. No. 96CR-11-6415)
Defendant-Appellant.	:	(REGULAR CALENDAR)
State of Ohio,	:	
Plaintiff-Appellant,	:	
v.	:	No. 11AP-313
Michael A. French,	:	(C.P.C. No. 96CR-11-6415)
Defendant-Appellee.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on September 15, 2011

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for
State of Ohio.

Yeura R. Venters, Public Defender, and *David L. Strait*, for
Michael A. French.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Both Michael A. French and the State of Ohio are appealing from the decision of the Franklin County Court of Common Pleas involving French's reporting requirements as a sex offender. French has assigned five assignments of error:

[I.] The trial court erred in failing to find that retroactive application of S.B. 10 violates the separation of powers doctrine of the Ohio Constitution.

[II.] The trial court erred in failing to find that retroactive application of all provisions of S.B. 10 violates the Retroactivity Clause contained in Section 28, Article II, of the Ohio Constitution.

[III.] The trial court erred in failing to find that retroactive application of all provisions of S.B. 10 violates the Ex Post Facto Clause of Section 10, Article I of the United States Constitution.

[IV.] The trial court erred in failing to find that the lifetime reporting and registration requirements imposed upon the Petitioner under S.B. 10 violate procedural due process rights under the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution.

[V.] The trial court erred in failing to find that S.B. 10 violates Section 16, Article VIII of the Ohio Constitution as it invalidated the terms of a valid contract – the plea agreement – which involved a lesser classification, ten years of reporting, fewer restrictions on conduct, no residential restrictions, and substantially reduced impact on his life.

{¶2} The State of Ohio has assigned four errors:

[I.] THE COMMON PLEAS COURT ERRED IN ENTERING A NEW JUDGMENT IN VIOLATION OF RES JUDICATA AND WHILE AN APPEAL WAS PENDING FROM A PREVIOUS JUDGMENT.

[II.] 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.

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

[IV.] THE COMMON PLEAS COURT ERRED IN AMBIGUOUSLY ORDERING THAT PETITIONER'S "OBLIGATION TO REPORT, OR ANY OTHER PROVISIONS PREVIOUSLY IMPOSED BY THE ORIGINAL SENTENCING, ARE HEREBY REINSTATED."

{¶3} This set of cases comes to us in a rather unusual posture. While an appeal on French's behalf was pending in this court, the trial court reversed itself and granted him the relief he sought. The State of Ohio has appealed the reversed ruling.

{¶4} French was sentenced to 17 months of incarceration as a result of his conviction on a single charge of attempted sexual battery. His sentence was journalized on March 27, 1997.

{¶5} Ten years later, following the passage of 2007 Am.Sub.S.B. No. 10 (commonly known as the Adam Walsh Act) the Ohio Attorney General reclassified French as a Tier III offender and made French subject to re-classification.

{¶6} French contested the re-classification by filing a petition in the common pleas court. The judge assigned to his case denied him relief, so he appealed to this court. We stayed the case awarding guidance from the Supreme Court of Ohio.

{¶7} In June 2010, the Supreme Court of Ohio issued *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424 which found the Adam Walsh Act to be a violation of the

separation of powers because the legislation was automatically overturning judicial decisions as to reporting requirements for sexual offenders.

{¶8} After *Bodyke* was decided, the trial court judge assigned to French's case realized that she had made a mistake in her earlier ruling and tried to enter a new judgment. A successor judge entered a new judgment granting French relief. The judge did this before this appellate court ruled on the appeal of the first decision. This raises a serious question as to whether or not the trial court had jurisdiction to rule on the issues pending in the court of appeals.

{¶9} Simply stated, the trial court did not. The revised ruling of the common pleas court must therefore be vacated. Therefore, the State of Ohio's first assignment of error is sustained and the balance of their assignments of error are thereby rendered moot.

{¶10} Addressing French's appeal from the court's erroneous ruling, we have consistently followed the *Bodyke* decision and will continue to do so until the Supreme Court of Ohio gives us other guidance. In *State v. Hickman*, 10th Dist. No. 09AP-617, 2010-Ohio-5548, the Tenth District noted the following: "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." See also, *State v. Miliner*, 10th Dist. No. 09AP-643, 2010-Ohio-6117; *Edwards v. State*, 10th Dist. No. 10AP-645, 2011-Ohio-1492; *Powell v. State*,

10th Dist. No. 10AP-640, 2011-Ohio-1382; *Cook v. State*, 10th Dist. No. 10AP-641, 2011-Ohio-906; *Robinson v. State*, 10th Dist. No. 10AP-647, 2011-Ohio-1600, and *State v. Johnson*, 10th Dist. No. 10AP-932, 2011-Ohio-2009.

{¶11} We, therefore, sustain French's first assignment of error. We reverse the first ruling of the common pleas court and remand the case for reinstatement of French's reporting duties and classification under prior law.

{¶12} Our ruling on the first assignment of error renders the balance of French's assignments of error moot. In summary, we sustain the State of Ohio's first assignment of error and French's first assignment of error. The balance of the assignments of error are thereby rendered moot. We remand the case for further action consistent with this decision.

*Judgments reversed; cause
remanded with instructions.*

SADLER and CONNOR, JJ., concur.
