

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellant, :
 :
 v. : No. 11AP-331
 : (C.P.C. No. 01CR-4965)
 Richard Kalb, : (REGULAR CALENDAR)
 :
 Defendant-Appellee. :

D E C I S I O N

Rendered on December 1, 2011

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

APPEAL from the Franklin County Court of Common Pleas.

DORRIAN, J.

{¶1} Plaintiff-appellant, State of Ohio ("the state"), appeals from a judgment of the Franklin County Court of Common Pleas granting the petition filed by defendant-appellee, Richard Kalb ("appellee"), contesting his reclassification as a Tier III sex offender.¹ For the reasons that follow, we affirm.

{¶2} In January 2002, appellee pled guilty to one count of sexual battery, a felony of the third degree. The trial court sentenced appellee to one year of incarceration and, pursuant to the parties' stipulation and the statutes in effect at the time, classified appellee as a sexually oriented offender. In 2007, Am.Sub.S.B. 10 amended the sex

¹ The trial court's order granting the petition refers to appellee as a Tier II sex offender; however, both the state and appellee indicate that he was actually reclassified as a Tier III sex offender.

offender classification law, dividing sex offenders into three tiers based on the crime committed. The law directed the attorney general to reclassify sex offenders who previously had been classified under prior law. The attorney general reclassified appellee as a Tier III sex offender.

{¶3} On January 30, 2008, appellee filed a petition to contest the reclassification. The trial court stayed the matter pending the Supreme Court of Ohio's decision in *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424. On March 25, 2011, the trial court granted appellee's petition, holding that appellee's reclassification was vacated, that his prior classification was reinstated, and that he was required to comply with all registration requirements in effect prior to January 1, 2008.

{¶4} The state appeals from the trial court's judgment granting appellee's petition, setting forth two assignments of error for this court's review:

[I.] 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.

[II.] THE COMMON PLEAS COURT ERRED IN DECLARING THAT PETITIONER "IS REQUIRED TO COMPLY WITH ALL REGISTRATION REQUIREMENTS IN EFFECT PRIOR TO JANUARY 1, 2008."

{¶5} This court recently addressed the same assignments of error in the consolidated cases captioned *State v. May*, 10th Dist. No. 11AP-306, 2011-Ohio-5624. In that decision, we overruled both of these assignments of error, as well as one additional assignment of error not raised in the present case. *Id.* We reach the same result here and will briefly outline our reasons for overruling the state's assignments of error.

{¶6} As noted in *May*, the first assignment of error has been addressed many times by this court. *Id.* at ¶2. In applying the decisions of the Supreme Court of Ohio in *Bodyke and Chojnacki v. Cordray*, 126 Ohio St.3d 321, 2010-Ohio-3212, we have "consistently rejected" the argument the state raises in its first assignment of error. *State v. Johnson*, 10th Dist. No. 10AP-932, 2011-Ohio-2009, ¶8. Further, "[w]e have 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." *Id.*, quoting *Hosom v. State*, 10th Dist. No. 10AP-671, 2011-Ohio-1494, ¶8. See also *State v. Young*, 10th Dist. No. 10AP-911, 2011-Ohio-2374; *Core v. State*, 10th Dist. No. 09AP-192, 2010-Ohio-6292; *State v. Hazlett*, 10th Dist. No. 09AP-1069, 2010-Ohio-6119; *State v. Houston*, 10th Dist. No. 09AP-592, 2010-Ohio-4374; *State v. Watkins*, 10th Dist. No. 09AP-669, 2010-Ohio-4187; *Cook v. Ohio*, 192 Ohio App.3d 674, 2011-Ohio-906.

{¶7} In light of this precedent, the trial court did not err in granting appellee's petition challenging his reclassification. Accordingly, the state's first assignment of error is overruled.

{¶8} In *May*, we concluded that the issue raised here as the state's second assignment of error was addressed by the Supreme Court of Ohio in *State v. Gingell*, 128 Ohio St.3d 444, 2011-Ohio-1481, and *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374. *May* at ¶6. This conclusion is consistent with our prior decisions. For example, in *Johnson*, we concluded that "*Bodyke and Gingell* make it clear that none of the Adam Walsh Act provisions, including the new reporting requirements, can be applied to appellee." *Johnson* at ¶19. Therefore, the trial court did not err in ruling that appellee

was required to comply with the registration requirements in effect prior to January 1, 2008. Accordingly, the state's second assignment of error is overruled.

{¶9} For the foregoing reasons, both of the state's assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

BROWN and TYACK, JJ., concur.
