

[Cite as *State v. Anderson*, 2010-Ohio-3337.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23389
v.	:	T.C. NO. 08 CR 4814
	:	
GEORGE ANDERSON	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	

**OPINION**

Rendered on the 16<sup>th</sup> day of July, 2010.

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Defendant-Appellant

FROELICH, J.

{¶ 1} Defendant-Appellant George Anderson appeals from his conviction for failure to verify his address with the Montgomery County Sheriff’s Office. In light of the Ohio Supreme Court’s recent decision in *State v. Bodyke*, — Ohio —,

2010-Ohio-2424, the judgment of the trial court is Reversed.

## I

{¶ 2} In September, 1990, Anderson was convicted of breaking and entering, robbery, aggravated burglary, and three counts of rape. We affirmed his convictions and sentence on direct appeal. *State v. Anderson* (Feb. 6, 1992), Montgomery App. No. 12473.

{¶ 3} As a result of the July 1, 1997, effective date of Ohio's sexual offender classification statutes, Anderson was brought before the trial court for a sexual offender hearing. The trial court designated Anderson as a sexually oriented offender, which required him to register annually as a sex offender for ten years after his release from prison. Anderson was released in 2007, and he registered with the Montgomery County Sheriff's Office.

{¶ 4} Effective January 1, 2008, as a result in changes to Ohio's sexual offender statutes, the attorney general's office classified Anderson as a Tier III offender, requiring him to report every 90 days for the rest of his life, rather than annually for ten years. He complied for his first three dates in 2008, but he failed to appear on December 10, 2008. Anderson was indicted on one count of failure to notify, in violation of R.C. 2950.05, and one count of failure to verify, in violation of R.C. 2950.06. A jury found Anderson guilty of failure to verify, but not guilty of failure to notify. The trial court ordered a mandatory three-year prison sentence. Anderson appeals.

## II

{¶ 5} Anderson raises several issues on appeal, including challenging the

constitutionality of his conviction for failure to verify. We conclude that because Anderson's conviction was based upon the attorney general's unconstitutional reclassification of Anderson as a Tier III sexual offender, his conviction must be vacated.

{¶ 6} When Anderson was designated by the trial court as a sexually oriented offender, he was required, pursuant to the version of R.C. 2950.06 in effect at that time, to verify his address once each year for ten years. Several years later, the attorney general's office reclassified Anderson as a Tier III offender, pursuant to R.C. 2950.031 and R.C. 2950.032. As a result of that reclassification, the current version of R.C. 2950.06 required him to verify his address every 90 days for the rest of his life.

{¶ 7} The Ohio Supreme Court recently held that both R.C. 2950.031 and R.C. 2950.032 violate the separation-of-powers doctrine. *State v. Bodyke*, — Ohio —, 2010-Ohio-2424, paragraphs two and three of the syllabus. Therefore, the Court struck both sections, held that any reclassifications made by the Attorney General are invalid, and reinstated prior judicial sexual offender classifications. *Id.* at ¶2. The Court also reinstated previously imposed community notification and registration requirements. *Id.* at ¶66.

{¶ 8} In light of the *Bodyke* opinion, the State properly concedes that Anderson could not be convicted of failure to verify his address every 90 days because he was only required to verify his address once a year, in accordance with the version of R.C. 2950.06 in effect at the time of his sexually oriented offender designation. Accordingly, we must vacate Anderson's conviction, rendering any

remaining issues moot.

III

{¶ 9} The Defendant-Appellant’s conviction for failure to verify his address is reversed, and he is ordered discharged as to that offense.

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FAIN, J. and WILLAMOWSKI, J.

(Hon. John R. Willamowski, Third District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

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- Hon. Michael L. Tucker