

[Cite as *State v. Thomas*, 2011-Ohio-2275.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Respondent-Appellant,	:	
v.	:	No. 10AP-963 (C.P.C. No. 04CR-07-4827)
Donnel H. Thomas,	:	(REGULAR CALENDAR)
Petitioner-Appellee.	:	

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D E C I S I O N

Rendered on May 12, 2011

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

*Yeura R. Venters*, Public Defender, and *David L. Strait*, for appellee.

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APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Respondent-appellant, the state of Ohio ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which granted a petition, filed by petitioner-appellee, Donnell H. Thomas ("appellee"), challenging his reclassification as a Tier II sex offender. For the following reasons, we affirm.

{¶2} In May 2005, appellee pleaded guilty to gross sexual imposition. The trial court sentenced him to eight months imprisonment and designated him a habitual sex offender pursuant to the sex offender classification law in effect at that time. Afterward, S.B. 10 amended the sex offender classification law in response to the federal Adam Walsh Act. S.B. 10 divided sex offenders into three tiers based solely on the crime committed, and it directed the attorney general to reclassify sex offenders who had already been classified by court order under prior law. The attorney general reclassified appellee a Tier II sex offender under S.B. 10. Appellee filed a petition to contest the reclassification. He claimed that it was unconstitutional and included a claim that it violated the separation-of-powers doctrine in the state constitution. The trial court granted appellee's petition. In an entry journalizing its decision, the court held, "the reclassification of [appellee] is VACATED, and the classification and registration orders previously in existence are REINSTATED." The court also said that the "requirements imposed upon [appellee] by the Adam Walsh Act are a nullity."

{¶3} Appellant appeals, raising two assignments of error:

[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 "THE REQUIREMENTS IMPOSED UPON THE PETITIONER BY THE ADAM WALSH ACT ARE A NULLITY."

{¶4} In its first assignment of error, appellant argues that the trial court erred by vacating appellee's Tier II sex offender classification and reinstating his original classification as a habitual sex offender. We disagree.

{¶5} S.B. 10, through R.C. 2950.031 and 2950.032, directed the attorney general to reclassify sex offenders who had already been classified under prior law. R.C. 2950.032 would apply if the sex offender were in prison for a sex-related crime. R.C. 2950.031 would apply if, like appellee, the sex offender had registered an address for his residence, school or employment. According to the Supreme Court of Ohio, however, those statutes violate the separation-of-powers doctrine in the state constitution because they enabled the executive branch to reopen and review past decisions of the judicial branch. *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, paragraphs two and three of the syllabus. Consequently, the court severed R.C. 2950.031 and 2950.032 from S.B. 10. *Id.* at ¶66.

{¶6} Appellant asserts that the severance of those statutes meant that the trial court had no authority to consider appellee's petition contesting his reclassification because it was filed pursuant to the same statutes. In *State v. Johnson*, 10th Dist. No. 10AP-932, 2011-Ohio-2009, ¶6-9, we rejected this exact argument given our consistent precedent indicating that, pursuant to *Bodyke*, a sex offender who has been improperly reclassified by the attorney general under S.B. 10 is entitled to have his reclassification vacated and his classification from prior law reinstated. Here, the attorney general reclassified appellee a sex offender under S.B. 10 in contravention of *Bodyke*, and therefore, the trial court did not err by vacating appellee's reclassification and reinstating

his original classification from prior law. Thus, we overrule appellant's first assignment of error.

{¶7} Appellant contends that if we overrule its first assignment of error, we must certify our decision as being in conflict with *Lyttle v. State*, 12th Dist. No. CA2010-04-089, 2010-Ohio-6277. But we will address that claim only by a separate motion to certify filed under App.R. 25.

{¶8} In its second assignment of error, appellant argues that the trial court erred when it indicated that none of the provisions in S.B. 10 apply to appellee. We disagree.

{¶9} In *State v. Gingell*, \_\_\_\_ Ohio St.3d \_\_\_\_, 2011-Ohio-1481, ¶8, the Supreme Court of Ohio concluded that when a sex offender's original classification under prior law is reinstated, the orders associated with that prior law are also reinstated. Consequently, this court recognized that, based on *Gingell*, none of the provisions in S.B. 10 apply to a sex offender whose classification under prior law has been reinstated. See *Johnson* at ¶19. Therefore, the trial court correctly indicated that appellee, having had his classification from prior law reinstated, was not bound by any of the provisions in S.B. 10. Thus, we overrule appellant's second assignment of error.

{¶10} In summary, we overrule appellant's first and second assignments of error. Accordingly, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BROWN and DORRIAN, JJ., concur.

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