[Cite as *Martin v. State*, 2011-Ohio-3307.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Shenchez A. Martin,	:	
Petitioner-Appellee,	:	
		No. 10AP-613
v.	:	(C.P.C. No. 10MS-04-278)
State of Ohio,	:	(REGULAR CALENDAR)
Respondent-Appellant.	:	

D E C I S I O N

Rendered on June 30, 2011

Yeura R. Venters, Public Defender, and *Allen V. Adair*, for appellee.

Ron O'Brien, Prosecuting Attorney, and *John H. Cousins, IV*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} This is an appeal by respondent-appellant, State of Ohio ("state"), from a judgment of the Franklin County Court of Common Pleas following a hearing by the trial court on a petition filed by petitioner-appellee, Shenchez A. Martin, to contest reclassification pursuant to R.C. Chapter 2950.

{¶2} By way of background, on February 23, 2005, appellee entered a guilty plea in the Guernsey County Court of Common Pleas to attempted importuning, in violation of R.C. 2907.07(B). By judgment entry filed on that same date, the trial court sentenced appellee to a six-month suspended jail term, and a one-year period of probation. On the

court's judgment entry, a box was checked indicating that the offense "is not" a sexually oriented offense.

{¶3} On January 8, 2010, appellee received a letter from the Franklin County Sheriff's Office informing him of a "DUTY TO REGISTER." Specifically, the letter provided in relevant part:

> On February 23, 2005 you were convicted and sentenced for "Attempted Importuning", in violation of Ohio revised Code Section 2907.07(B), a misdemeanor of the first degree. It has been brought to this agency's attention that under Megan's Law this offense was a sexually oriented offense subject to registration pursuant to Ohio revised Code Section 2950.01(D)(1)(a) and (g).
>
> You were not advised at the time of your sentencing of your requirements to register as a sexual offender; however, we have been advised by the Guernsey County Sheriff's Office that the reporting requirements under Megan's Law are automatic and you are required to register despite an absence of notification of such.
>
> Therefore; you have three days to complete initial registration with the Franklin County Sheriff's Office. Under the current Adam Walsh Act you would be considered a Tier I offender.

{¶4} On April 30, 2010, appellee filed a petition to contest reclassification pursuant to R.C. Chapter 2950. In the petition, appellee alleged that he currently resides in Franklin County, and that he "anticipated not registering as a sexually oriented offender with the Sheriff of this county." The petition further alleged that appellee had been improperly classified as a "Tier I Sex Offender" under Am.Sub.H.B. No. 10 ("S.B. No. 10"), and that such classification was unconstitutional.

{¶5} On May 5, 2010, the state filed a memorandum opposing the petition. The state argued in part that, although the trial court that accepted appellee's guilty plea in 2005 had checked a box on the entry indicating that the offense was not a sexually

oriented offense, appellee's crime was nevertheless classified as a sexually oriented offense by operation of law, and therefore he was subject to a ten-year duty of registration and annual verification. The state further argued that appellee's constitutional challenges to S.B. No. 10 were without merit.

{¶6} On June 3, 2010, the trial court conducted a hearing on the petition. On that same date, the Supreme Court of Ohio issued its decision in *State v. Bodyke,* 126 Ohio St.3d 266, 2010-Ohio-2424. During the hearing, the parties discussed the import of the *Bodyke* decision to the instant case. The prosecutor conceded, in light of the *Bodyke* decision, "that the new registration requirements under the Adam Walsh act do not apply to this defendant." (Tr., 2.) The prosecutor further represented that "[t]he state cannot speak to whether the defendant is now required to register under Megan's Law." (Tr., 3.) Upon further questioning by the trial court, the prosecutor represented to the court that "the state will consult with the Franklin County Sheriff's Office" and determine whether "that could possibly be litigated in a failure to register prosecution. But, again, as far as his duty to register as a Tier I offender, the state does concede that he no longer has that duty based on the Bodyke decision." (Tr., 4.)

{¶7} The trial court filed a decision on June 3, 2010, finding that "consistent with *Bodyke,* * * * this court holds that Judge Ellwood's explicit ruling in the underlying criminal case in Guernsey County precludes any classification of Martin as a sex offender. He is not required to register."

{¶8} On appeal, the state sets forth the following three assignments of error for this court's review:

FIRST ASSIGNMENT OF ERROR

The lower court erred in granting the petition when the petition was based on R.C. 2950.031(E), which is part of a statute that has been severed in its entirety.

SECOND ASSIGNMENT OF ERROR

The lower court erred by ruling that R.C. Chapter 2950, as effective January 1, 2008, did not apply to petitioner.

THIRD ASSIGNMENT OF ERROR

The lower court erred when it ordered relief beyond that which was authorized by R.C. 2950.031(E).

{¶9} Under the first assignment of error, the state argues that, pursuant to the Supreme Court's holdings in *Bodyke* and *Chojnacki v. Cordray,* 126 Ohio St.3d 321, 2010-Ohio-3212, the provisions of R.C. 2950.031 and 2950.032 have been severed in their entirety, including the petition-contest procedures created by those statutes. As a result, the state maintains, the trial court in the instant case had no authority to rule on appellee's petition.

{¶10} This court has "consistently rejected the argument posited by the state." *State v. Johnson,* 10th Dist. No. 10AP-932, 2011-Ohio-2009, ¶8. Specifically, this court has " '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, citing *State v. Watkins,* 10th Dist. No. 09AP-669, 2010-Ohio-4187; *State v. Miliner,* 10th Dist. No. 09AP-643, 2010-Ohio-6771; *State v. Hazlett,* 191 Ohio App.3d 105, 2010-Ohio-6119; *Core v. State,* 191 Ohio App.3d 651, 2010-Ohio-6292; and *Cook v. State,* 10th Dist. No. 10AP-641, 2011-Ohio-906.

{¶11} In light of the above precedent, the state's first assignment of error is overruled.

{¶12} Under the second assignment of error, the state argues that the trial court erred in ruling that R.C. Chapter 2950, as amended by S.B. No. 10, effective January 1, 2008, did not apply to appellee. The state argues that, regardless of whether the Guernsey County trial court's entry relieved appellee of the duty to register under Megan's Law (the predecessor to S.B. No. 10), appellee would still have a duty to register as a Tier I offender under the current provisions of R.C. Chapter 2950. We disagree.

{¶13} As this court has noted, "the Supreme Court of Ohio has recently made it clear 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, citing *State v. Gingell,* 128 Ohio St.3d 444, 2011-Ohio-1481. See also *State v. Young,* 10th Dist. No. 10AP-911, 2011-Ohio-2374, ¶11 ("based on *Gingell*, none of the provisions in S.B. 10 apply to a sex offender whose classification under prior law has been reinstated"); *Wyatt v. State,* 10th Dist. No. 10AP-883, 2011-Ohio-2874 (same).

{¶14} Accordingly, the state's second assignment of error is without merit and is overruled.

{¶15} Under the third assignment of error, the state contends the trial court erred when it ordered relief beyond that which was authorized by R.C. 2950.031(E); more specifically, the state maintains that the trial court's order exceeded the narrow authority to address "registration requirements" under R.C. 2950.031. The state further argues that, even if R.C. 2950.031 had not been severed by *Bodyke* and *Chojnacki,* no statutory

authority exists to support the trial court's orders prohibiting any sheriff from requiring registration for further sex offenses.

{¶16} We do not construe the trial court's order so broadly. As noted by the trial court in its decision, a judge of the Guernsey County Court of Common Pleas filed a judgment entry in 2005 in which that court "made an explicit, affirmative finding that Martin's 'Offense' was 'not' a sexually oriented offense, and that Mr. Martin was not entitled to a sex offender hearing under R.C. Chapter 2950." While the state maintains in the instant action that the entry of the Guernsey County trial court was erroneous, the somewhat limited record before this court does not indicate that either the state or appellee appealed the judgment in the Guernsey County case.[1] In context, we construe the trial court's decision in the instant appeal as giving recognition to the fact that, pursuant to the 2005 Guernsey County judgment entry, which apparently stands unchallenged, appellee was not deemed to have committed a sexually oriented offense (i.e., subject to registration requirements). Finding no error, we overrule the state's third assignment of error.

{¶17} Based upon the foregoing, the state's three assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

BRYANT, P.J., and KLATT, J., concur.

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[1] The propriety of the 2005 Guernsey County judgment is not before us in this appeal, and we therefore express no opinion as to the correctness of that entry (or whether the state's apparent failure to appeal that entry renders the judgment therein res judicata).