

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Frederick A. Wyatt,	:	
	:	
Petitioner-Appellee,	:	
	:	
v.	:	No. 10AP-883
	:	(C.P.C. No. 08MS-144)
State of Ohio,	:	(REGULAR CALENDAR)
	:	
Respondent-Appellant.	:	

D E C I S I O N

Rendered on June 14, 2011

Yeura R. Venters, Public Defender, and *Paul Skendelas*, for appellee.

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

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, P.J.

{¶1} Respondent-appellant, State of Ohio, appeals from a judgment of the Franklin County Court of Common Pleas that granted the Petition to Contest Reclassification of petitioner-appellee, Frederick A. Wyatt, vacated his reclassification as a Tier III sex offender, and reinstated his prior classification and registration orders. Because the trial court properly vacated petitioner's classification as a Tier III sex offender, we affirm.

I. Facts and Procedural History

{¶2} Petitioner was convicted of rape in Massachusetts in 1983. As a result of a trial held in 1998, petitioner was found to be not sexually dangerous pursuant to Massachusetts law then in effect.

{¶3} Congress passed the Adam Walsh Child Protection and Safety Act ("AWA") in 2006. See 42 U.S.C. 16901, et seq. The AWA created national standards for sexual offender classification, including registration and community notification requirements. In 2007, Ohio enacted its version of the AWA in Am.Sub.S.B. No. 10, effective January 1, 2008. Ohio's AWA repealed the former sex offender registration laws, generally known as Megan's Law, that utilized three classifications, "sexually oriented offender," "habitual sexual offender," and "sexual predator" and replaced it with a new three-tiered system.

{¶4} Pursuant to R.C. 2950.031 or 2950.032 of Ohio's AWA, the attorney general applied the three-tiered system to petitioner, who had moved to Ohio, and classified him as a Tier III sex offender, requiring him to register personally with the sheriff every 90 days for life and subjecting him to community notification requirements. On January 25, 2008, petitioner filed a petition to contest his reclassification, as well as a motion to stay enforcement of community notification. The trial court granted the stay pending the Ohio Supreme Court's decision in *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424.

{¶5} The Supreme Court of Ohio decided *Bodyke* on June 3, 2010, concluding "R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders who have already been classified by court order under former law, impermissibly instruct the executive branch to review past decisions of the judicial branch

and thereby violate the separation of powers doctrine." *Id.* at paragraph two of the syllabus. Noting *Bodyke* severed the reclassification provisions of R.C. 2950.031 and 2950.032 and determined they may not be enforced, the trial court lifted the stay previously imposed, granted petitioner's petition to contest reclassification, vacated his reclassification as a Tier III offender, and reinstated his prior classification and registration orders.

II. Assignments of Error

{¶6} The state appeals, assigning four errors:

FIRST ASSIGNMENT OF ERROR

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.

SECOND ASSIGNMENT OF ERROR

THE COMMON PLEAS COURT ERRED IN AWARDING RELIEF BASED ON *STATE v. BODYKE* IN THE ABSENCE OF A PRIOR JUDICIAL CLASSIFICATION BY AN OHIO JUDGE.

THIRD ASSIGNMENT OF ERROR

THE COMMON PLEAS COURT ERRED IN DECLARING THAT "THE REQUIREMENTS IMPOSED UPON THE PETITIONER BY THE ADAM WALSH ACT ARE A NULLITY."

FOURTH ASSIGNMENT OF ERROR

THE COMMON PLEAS COURT ERRED IN DECLARING THAT PETITIONER IN 1998 "WAS FOUND BY TRIAL TO BE NOT SEXUALLY DANGEROUS * * *."

III. First Assignment of Error – Basis for Relief

{¶7} The state's first assignment of error asserts that because the Supreme Court in *Bodyke* severed R.C. 2950.031 and 2950.032, the trial court had no jurisdiction to consider petitioner's petition after lifting the stay.

{¶8} Although *Bodyke* concluded the appropriate remedy was to sever R.C. 2950.031 and 2950.032 and to reinstate those defendants to their prior classifications, the state questioned the Supreme Court's resolve on those issues, noting the alignment of justices in *Bodyke*. Were any doubt to exist whether *Bodyke* found R.C. 2950.031 and 2950.032 to violate the separation of powers doctrine and severed those provisions, the Supreme Court made clear in *Chojnacki v. Cordray*, 126 Ohio St.3d 321, 2010-Ohio-3212, that *Bodyke* "severed R.C. 2950.031 and 2950.032, the reclassification provisions of the Adam Walsh Act, and held that after severance, those provisions could not be enforced." *Id.* at ¶5. Because the Attorney General reclassified petitioner as a Tier III sex offender under provisions rendered unconstitutional and unenforceable, the reclassification cannot stand.

{¶9} As to the remedy post-*Bodyke*, this court addressed the state's same argument in earlier cases and concluded "appellant's reclassification under the severed statute must be vacated and his prior judicial classification must be reinstated." *State v. Miliner*, 10th Dist. No. 09AP-643, 2010-Ohio-6771, ¶15; *Cook v. Ohio*, 10th Dist. No. 10AP-641, 2011-Ohio-906, ¶7-10; *State v. Hickman*, 10th Dist. No. 09AP-617, 2010-Ohio-5548, ¶5 (stating "[t]his 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"); *State v. Watkins*, 10th Dist. No. 09AP-669, 2010-

Ohio-4187, ¶12-13, discretionary appeal not allowed, 128 Ohio St.3d 1413, 2011-Ohio-828; *State v. Houston*, 10th Dist. No. 09AP-592, 2010-Ohio-4374, ¶12-13, discretionary appeal not allowed, 128 Ohio St.3d 1446, 2011-Ohio-1618; *State v. Jackson*, 10th Dist. No. 09AP-687, 2010-Ohio-4375, ¶10-11, discretionary appeal not allowed, 128 Ohio St.3d 1446, 2011-Ohio-1618. See also *Majewski v. State*, 8th Dist. No. 92372, 2010-Ohio-3178, ¶13, discretionary appeal not allowed, 127 Ohio St.3d 1462, 2010-Ohio-6008 (reinstating the petitioner's original classification was "consistent with *Bodyke*"); *State v. Robins*, 2d Dist. No 23437, 2010-Ohio-2842, ¶17 (stating that "[s]ince R.C. 2950.031 and 2950.032 have been excised in the statutory scheme, Robins' previous classification as a sexually oriented offender is reinstated").

{¶10} Having "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," we do so again. *State v. Johnson*, 10th Dist. No. 10AP-932, 2011-Ohio-2009, ¶8, quoting *Hosom v. State*, 10th Dist. No. 10AP-671, 2011-Ohio-1494, ¶8. Accordingly, the trial court did not err in granting petitioner's petition challenging his reclassification. The state's first assignment of error is overruled.

IV. Second Assignment of Error – No Prior Judicial Classification

{¶11} The state's second assignment of error asserts the trial court erred in awarding relief because no Ohio judge classified petitioner prior to his reclassification under the AWA. Although petitioner's conviction arose out of state, he, as a result of judicial proceedings, was determined to be not sexually dangerous in Massachusetts.

When petitioner moved to Ohio, he registered and was classified as a sexually oriented offender as of November 1998.

{¶12} To the extent petitioner's Ohio classification was the result of the Massachusetts trial proceedings, "we question the state's argument that [petitioner's] designation as a sexually oriented offender was not the result of a judicial determination." *Johnson* at ¶14. To the contrary, the effect of the Massachusetts court's determining petitioner was not sexually dangerous was his designation as a sexually oriented offender in Ohio. Because petitioner's classification prior to reclassification under Ohio's AWA "resulted from a specific judicial determination," petitioner "was among those offenders to which *Bodyke's* concern regarding separation of powers would apply." *Id.*

{¶13} Moreover, even if petitioner's classification "did not arise from a specific judicial determination to which *Bodyke* would apply, we have nevertheless recognized that offenders whose pre-Adam Walsh Act classification arose purely as a matter of law" nonetheless "must receive the benefit of the *Bodyke* remedy returning those offenders to their pre-Adam Walsh Act classifications" since *Bodyke* completely severed the statutory provisions governing attorney general reclassification. *Id.* at ¶15, citing *State v. Hazlett*, 191 Ohio App.3d 105, 2010-Ohio-6119 and *Core v. Ohio*, 10th Dist. No. 09AP-192, 2010-Ohio-6292.

{¶14} Because the trial court did not err in rejecting the state's contention that *Bodyke* does not apply to the facts of petitioner's case, we overrule the state's second assignment of error.

V. Third Assignment of Error – Requirements of AWA as a Nullity

{¶15} The state's third assignment of error contends the trial court erred when its entry concluded with the statement that "the requirements imposed upon the Petitioner by the Adam Walsh Act are a nullity." (Entry, 2.) The state asserts that some of the requirements of the AWA would apply to petitioner regardless of the trial court's action on his classification as a Tier III offender.

{¶16} The Supreme Court of Ohio recently clarified in *State v. Gingell*, 128 Ohio St.3d 444, 2011-Ohio-1481, "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; *Gingell* at ¶8 (concluding that "pursuant to *Bodyke*, *Gingell*'s original classification under Megan's Law and the associated community-notification and registration order were reinstated"). As *Bodyke* and *Gingell* make clear, "none of the AWA provisions, including the new reporting requirements" can be applied to petitioner. *Johnson* at ¶19 (noting "the state's argument that some new Adam Walsh Act reporting requirements apply to [petitioner] is without merit"). The trial court properly reinstated petitioner's prior classification and registration orders.

{¶17} Accordingly, the state's third assignment of error is overruled.

VI. Fourth Assignment of Error – Petitioner Not Sexually Dangerous

{¶18} The state's fourth assignment of error contends the trial court erred in stating, as it discussed petitioner's past litigation, that in 1998 he was found to be not sexually dangerous. The state asserts "the jury had merely determined that there was reasonable doubt about petitioner's sexual dangerousness." (Respondent's brief, 25.)

{¶19} As petitioner notes, in *In re Wyatt* (1998), 428 Mass. 347, 348, the court described petitioner's litigation history and stated, "On April 8, 1998, after a six-day trial, a jury in the Superior Court found that the petitioner is not sexually dangerous, as defined by G.L. c. 123A § 1." Although that court also noted the state failed to prove beyond a reasonable doubt petitioner was sexually dangerous, we cannot fault the trial court here for in effect quoting the Massachusetts decision. In the end, however, the statement is not material to the ultimate conclusion that petitioner's Tier III sex offender classification must be vacated. Accordingly, the state's fourth assignment of error is overruled.

{¶20} Having overruled all four of the state's assignments of error, we affirm the judgment of the trial court.

Judgment affirmed.

KLATT and SADLER, JJ., concur.
