

[Cite as *State v. Stapleton*, 2011-Ohio-3785.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 09AP-570
 : (C.P.C. No. 96CR-01-492)
 Todd A. Stapleton, :
 : (REGULAR CALENDAR)
 Defendant-Appellant. :

D E C I S I O N

Rendered on August 2, 2011

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

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

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶1} Defendant-appellant, Todd A. Stapleton ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas denying his petition to contest his sexual offender reclassification as a Tier III sex offender. For the reasons that follow, we reverse and remand this matter with instructions.

{¶2} On June 25, 1996, appellant was convicted of abduction. On October 21, 1999, pursuant to a hearing, appellant was classified as a sexual predator under Megan's Law.

{¶3} In 2006, Congress passed the Adam Walsh Child Protection and Safety Act, which created national standards for sexual offender classification, registration, and community notification. As a result, Ohio reorganized its sexual offender registration scheme in 2007 by enacting its version of the Adam Walsh Act ("AWA"), also known as S.B. No. 10 ("S.B. 10"), which became effective on July 1, 2007 and January 1, 2008. S.B. 10 repealed the three-level scheme set forth under Megan's Law ("sexually oriented offender," "habitual sexual offender," and "sexual predator"), and replaced it with a new three tier system (Tier I, Tier II, and Tier III).

{¶4} As a result of the enactment of S.B. 10, appellant was reclassified by Ohio's attorney general as a Tier III sexual offender. Under this new classification, appellant was required to personally register with the local sheriff every 90 days for life and was also subject to community notification provisions. He also became subject to additional reporting and registration requirements.

{¶5} Appellant filed a petition to contest reclassification and also requested a hearing as to the applicability of the new registration requirements. Appellant raised a variety of constitutional challenges to the AWA. Among those challenges were the assertions that Ohio's AWA violated the separation-of-powers doctrine of the Ohio Constitution, as well as the retroactivity clause of the Ohio Constitution. On May 15, 2009, the Franklin County Court of Common Pleas denied appellant's petition contesting reclassification.

{¶6} Appellant filed a timely appeal and now raises seven assignments of error for our review:

FIRST ASSIGNMENT OF ERROR

The trial court erred in failing to find that retroactive application of all provisions of S.B. 10 violates the Retroactivity Clause contained in Section 28, Article II, of the Ohio Constitution.

SECOND ASSIGNMENT OF ERROR

The trial court erred in failing to find that retroactive application of all provisions of S.B. 10 violates the Ex Post Facto Clause of Section 10, Article I of the United States Constitution.

THIRD ASSIGNMENT OF ERROR

The trial court erred in failing to find that S.B. 10 violates the separation of powers doctrine of the Ohio Constitution.

FOURTH ASSIGNMENT OF ERROR

The trial court erred in failing to find that retroactive application of S.B. 10 violates the Double Jeopardy Clauses of the Fifth Amendment to United States Constitution and Section 10, Article I, of the Ohio Constitution.

FIFTH ASSIGNMENT OF ERROR

The trial court erred in failing to find that the lifetime reporting and registration requirements imposed upon the Petitioner under S.B. 10 violate procedural due process rights under the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution.

SIXTH ASSIGNMENT OF ERROR

The trial court erred in failing to find that S.B. 10's residency restrictions violate the Due Process Clause of the United States Constitution and Section 16, Article I of the Ohio Constitution.

SEVENTH ASSIGNMENT OF ERROR

The trial court erred in failing to find that S.B. 10 violates Section 16, Article VIII of the Ohio Constitution as it

invalidated the terms of a valid contract – the plea agreement – which involved a lesser classification, ten years of reporting, fewer restrictions on conduct, no residential restrictions, and substantially reduced impact on his life.

{¶7} Because appellant's first and third assignments of error are dispositive of his appeal, we shall begin by addressing these two assignments of error.

{¶8} Subsequent to the filing of appellant's notice of appeal, the Supreme Court of Ohio considered the constitutionality of Ohio's AWA.¹ On June 3, 2010, the court determined "R.C. 2950.031 and 2950.032, the reclassification provisions in the AWA, are unconstitutional because they violate the separation-of-powers doctrine." *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, ¶2.

{¶9} After concluding that R.C. 2950.031 and 2950.032 were unconstitutional, the Supreme Court of Ohio determined the remedy was to sever those provisions. "R.C. 2950.031 and 2950.032 are severed and * * * after severance, they may not be enforced. R.C. 2950.031 and 2950.032 may not be applied to offenders previously adjudicated by judges under Megan's Law, and the classifications and community-notification and registration orders imposed previously by judges are reinstated." *Bodyke* at ¶66.

{¶10} The State of Ohio submits that appellant cannot obtain relief pursuant to R.C. 2950.031 and 2950.032, due to the Supreme Court of Ohio's subsequent decision in *Chojnacki v. Cordray*, 126 Ohio St.3d 321, 2010-Ohio-3212. In *Chojnacki*, R.C. 2950.031 and 2950.032 were facially severed in their entirety, leaving no part of either statute to be enforced. As a result, the State of Ohio argues the petition contest procedures created under R.C. 2950.031 and 2950.032 have also been severed, thereby leaving the trial

¹ On August 14, 2009, this court granted appellant's motion to stay the proceedings in this appeal pending the resolution of various constitutional issues by the Supreme Court of Ohio or by this court. The stay was vacated on March 24, 2011, and briefs were subsequently filed in this appeal.

court without authority to rule on the reclassification, and thus making dismissal of the petition the proper result.

{¶11} However, we have repeatedly rejected this argument and have instead recognized that, as a result of *Bodyke*, reclassifications made under the severed statutes must be vacated and the prior judicial classifications must be reinstated. See *State v. Lawson*, 10th Dist. No. 09AP-672, 2011-Ohio-1255; *State v. Miliner*, 10th Dist. No. 09AP-643, 2010-Ohio-6117; and *State v. Hickman*, 10th Dist. No. 09AP-617, 2010-Ohio-5548. See also *Cook v. State of Ohio*, 10th Dist. No. 10AP-641, 2011-Ohio-906 (case remanded to reinstate prior classification; individuals who filed their petitions prior to the ruling in *Bodyke* are entitled to the same relief granted in *Bodyke*); *Powell v. State of Ohio*, 10th Dist. No. 10AP-640, 2011-Ohio-1382, ¶2 ("because the Supreme Court of Ohio did not dismiss the many cases pending before it at the time it decided [*Bodyke*], the Supreme Court did not intend to nullify the petition process as to cases pending when *Bodyke* was decided."); *State v. Ogden*, 10th Dist. No. 09AP-640, 2011-Ohio-1589 (reclassification made under the severed statutes must be vacated; prior judicial classification was ordered to be reinstated); and *Edwards v. State of Ohio*, 10th Dist. No. 10AP-645, 2011-Ohio-1492 (sua sponte dismissal of petition as moot was error because appellant was not provided with the relief requested). We reject the State's contention that there is an intra-district conflict as to the use of the petition-contest proceedings, as we have consistently ordered relief on the same grounds and by the same method, i.e., by remanding with instructions to reinstate the petitioners to their previous classifications.

{¶12} Moreover, approximately two months after the issuance of its decision in *Bodyke*, the Supreme Court of Ohio reversed and remanded numerous cases to various

trial courts after several courts of appeals had rejected constitutional challenges to the AWA based on separation-of-powers grounds. See *In re Sexual Offender Reclassification Cases*, 126 Ohio St.3d 322, 2010-Ohio-3753. Notably, the Supreme Court of Ohio did not dismiss these petitions, but rather remanded the cases for further proceedings, if any, as necessitated by *Bodyke*. In several cases, the court specifically remanded to the trial courts with instructions to reinstate the original classification, registration and reporting requirements.

{¶13} Even if *Bodyke* and the *In re Sexual Offender Reclassification Cases* do not provide binding precedent on the jurisdictional issue, at a minimum, these cases provide some guidance as to the manner in which the Supreme Court determined the petitions of those who had been improperly reclassified should be handled. Because the Ohio Supreme Court drew no distinction on this issue prior to remanding numerous cases for reinstatement of the prior classifications, neither shall we.

{¶14} Additionally, in *State v. Williams* ___ Ohio St.3d ___, 2011-Ohio-3374, ¶20, the Supreme Court of Ohio recently held:

When we consider all of the changes enacted by S.B. 10 in aggregate, we conclude that imposing the current registration requirements on a sex offender whose crime was committed prior to the enactment of S.B. 10 is punitive. Accordingly, we conclude that S.B. 10, as applied to defendants who committed sex offenses prior to its enactment, violates Section 28, Article II of the Ohio Constitution, which prohibits the General Assembly from passing retroactive laws.

As a result of this conclusion, the court reversed and remanded the case for the imposition of a sentence that was consistent with the law in effect at the time Williams committed his offense, i.e., Megan's Law.

{¶15} Based upon the foregoing, we find appellant's reclassification as a Tier III sexual offender was unconstitutional and the trial court erred in denying appellant's petition, pursuant to *Bodyke* and *Williams*. Accordingly, we sustain appellant's first and third assignments of error.

{¶16} Because this ruling requires reversal and reinstatement of appellant's previous classification under Megan's Law, appellant's remaining assignments of error are rendered moot and we need not consider them. Therefore, we reverse the judgment of the Franklin County Court of Common Pleas and remand this matter to that court with instructions to: (1) vacate appellant's Tier III sexual offender classification pursuant to the AWA, and (2) reinstate his prior classification as a sexual predator, as well as his prior registration requirements, pursuant to Megan's Law.

*Judgment reversed;
cause remanded with instructions.*

SADLER and DORRIAN, JJ., concur.
