

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO

IN RE: AARON K. VON : **OPINION**
: **CASE NO. 2013-T-0085**

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 2012-CV-02284.

Judgment: Reversed and remanded.

Timothy E. Bellew, P.O. Box 427, Girard, OH 44420 (For Appellant).

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Appellee).

THOMAS R. WRIGHT, J.

{¶1} This accelerated-calendar appeal is from a final judgment of the Trumbull County Court of Common Pleas, overruling appellant, Aaron K. Von’s, application to terminate his registration requirements under Ohio’s sexually-oriented offender law. Appellant claims that, as a “Tier I” offender, he is eligible for the requested relief as R.C. 2950.15 retroactively applies to him. For the following reasons, the trial court’s conclusion that R.C. 2950.15 does not apply retroactively to appellant regardless of his “tier” classification is reversed.

{¶2} On January 29, 1997, appellant was convicted in Colorado of one count of sexual assault of a child, a fourth-degree felony, and one count of sexual assault, a first-degree misdemeanor. The Colorado trial court sentenced him to a prison term of one

year, and also placed him on probation for nine years. During the majority of the probation period, appellant continued to reside in Colorado and attended a sexual offender treatment program.

{¶3} In February 2005, appellant moved to Taos, New Mexico, where he lived and worked for approximately six years. In August 2011, he moved to his present home in Trumbull County, Ohio. At each place appellant resided, he continued to periodically register as a sexual offender with the county sheriff.

{¶4} After living in Trumbull County for 14 months, appellant filed an application to terminate his ongoing registration requirements. This application was submitted pursuant to R.C. 2950.15, which was enacted as part of the 2007 Adam Walsh Act and took effect on January 1, 2008. Prior to that date, Ohio's sexual offender statutory schemes did not contain provisions allowing a sexual offender to move for termination of registration requirements.

{¶5} Although not stated in his application to terminate, appellant maintained in subsequent submissions to the trial court that he qualifies as a Tier I sexual offender under the current Ohio statutory scheme. While his application was pending, he also moved the trial court for a preliminary injunction to stop the state from taking any steps to change his sexual offender classification from Tier I to Tier III. The trial court granted this motion, expressly holding that appellant would suffer irreparable harm if his classification were modified prior to the issuance of a final ruling on his application to terminate.

{¶6} In answering the application to terminate, the state asserted that R.C. 2950.15 does not apply because appellant's convictions for the sexual assaults predate the original enactment of the statute. The state further asserted that R.C. 2950.15 could

not be applied retroactively to appellant because, in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, the Supreme Court of Ohio expressly held that the Adam Walsh Act is only applicable to sexual offenses committed after January 1, 2008.

{¶7} After appellant submitted a reply brief on the “retroactivity” issue, the trial court issued its decision denying his application to terminate his registration obligations. As the basis for its judgment, the court held that, since no procedure for the termination of a registration order had existed prior to 2008, appellant was not eligible for any relief under R.C. 2950.15.

{¶8} Appellant raises a single assignment of error for review:

{¶9} “The trial court erred when it found that R.C. 2950.15 does not apply to convictions prior to the date of the underlying conviction, and dismissed Appellant’s conviction [*sic*], without considering the merits of the application.”

{¶10} Pursuant to R.C. 2950.15(B), a sexual offender has been granted the right to move a common pleas court to terminate his obligation to comply with registration requirements. However, under division (A) of the statute, the offender is only eligible for this relief if, inter alia, he is a Tier I sexual offender. In this case, no final determination was ever made regarding whether appellant is a Tier I sexual offender for purposes of R.C. 2950.15. Instead, the trial court based its decision to deny appellant’s motion solely upon the conclusion that the statute could not be applied retroactively. Therefore, the scope of this opinion will be limited to the specific ruling issued by the trial court.

{¶11} As noted above, in contending that R.C. 2950.15 could only be applied to sexual offenses committed subsequent to January 1, 2008, the state relied heavily upon the Ohio Supreme Court’s holding in *Williams, supra*. Even though the trial court did not expressly cite *Williams* in its analysis, the judgment contained a categorical statement

that R.C. Chapter 2950, as amended in the Adam Walsh Act, “is not retroactive.” Under his sole assignment, appellant argues that the state’s reliance upon *Williams* is misplaced. According to appellant, the application of the Supreme Court’s standard for retroactivity to R.C. 2950.15 actually supports the conclusion that all Tier I offenders can move to terminate registration requirements regardless of when the sexual offense was committed.

{¶12} In *Williams*, the primary question before the Ohio Supreme Court was the general effect of the Adam Walsh Act upon the application of sexual offender laws: i.e., did the new Act change the nature of the statutory scheme from purely remedial to punitive? In answering this query in the affirmative, the Supreme Court did not focus on any particular statute. Furthermore, the Court’s ultimate decision was set forth in broad terms: “2007 Am.Sub.S.B. No 10 [the Adam Walsh Act], 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.” *Williams*, 129 Ohio St.3d at the syllabus.

{¶13} Nevertheless, in reaching this conclusion, the Supreme Court specifically limited its analysis to four alterations in the statutory scheme: (1) the new classification system for sexual offenders, including Tier I, Tier II, and Tier III; (2) the new procedure for determining an offender’s classification; (3) the additional reporting and registration requirements; and (4) the increased duration of those requirements. *Id.* at ¶7, 16-19. As to the latter two changes, the Supreme Court emphasized that retroactive application was impermissible because the Adam Walsh Act had the effect of placing new burdens or obligations upon defendants in regard to sexual offenses committed in the past. *Id.* at ¶19.

{¶14} The *Williams* opinion does not refer to R.C. 2950.15. Unlike the statutes governing a sexual offender's classification and the imposition of reporting/registration requirements, R.C. 2950.15 does not impose any new burdens or obligations upon an offender for his prior sexual crimes. Rather, the statute essentially provides a means for a sexual offender to rid himself of prior burdens or obligations; i.e., a Tier I offender can have his registration requirements terminated.

{¶15} Notwithstanding the broad language of the *Williams* syllabus, the "retroactivity" analysis in the *Williams* opinion only addressed those parts of the Adam Walsh Act that were punitive in nature. Since the provisions of R.C. 2950.15 are not punitive in nature, *Williams* is not controlling as to the question of whether that statute applies retroactively to a sexual offender, such as appellant, who committed his sexual offense prior to January 1, 2008.

{¶16} "It is well-settled that statutes are presumed to apply prospectively unless expressly declared to be retroactive. R.C. 1.48; *Van Fossen v. Babcock & Wilcox Co.* (1988), 36 Ohio St.3d 100, 105, * * *. It is also settled that the General Assembly does not possess an absolute right to adopt retroactive statutes. Section 28, Article II of the Ohio Constitution prohibits the retroactive impairment of vested substantive rights. See *State v. LaSalle*, 96 Ohio St.3d 178, 2002 Ohio 4009, * * *, ¶13. However, the General Assembly may make retroactive any legislation that is merely remedial in nature. See *State ex rel. Slaughter v. Indus. Comm.* (1937), 132 Ohio St. 537, 542, * * *.

{¶17} "As noted in *Van Fossen* and *LaSalle*, we have distilled these principles into a two-part test for evaluating whether statutes may be applied retroactively. First, the reviewing court must determine as a threshold matter whether the statute is expressly made retroactive. *LaSalle*, 96 Ohio St.3d at 181, * * *, citing *Van Fossen*, 36

Ohio St.3d 100, * * *, at paragraphs one and two of the syllabus. The General Assembly's failure to clearly enunciate retroactivity ends the analysis, and the relevant statute may be applied only prospectively. *Id.* If a statute is clearly retroactive, though, the reviewing court must then determine whether it is substantive or remedial in nature. *LaSalle* at 181, * * *." *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, ¶9-10.

{¶18} In determining the General Assembly's intent under the first prong of the retroactivity test, the Ohio Supreme Court has focused upon the precise language used in the disputed statute. *See Id.* at ¶11-13; *Bielat v. Bielat*, 87 Ohio St.3d 350, 353-354 (2000). In relation to R.C. 2950.15, division (A) of the statute contains the dispositive wording:

{¶19} "(A) As used in this section and 2950.16 of the Revised Code, 'eligible offender' means a person who is convicted of, pleads guilty to, was convicted of, or pleaded guilty to a sexually oriented offense or child-victim oriented offense, *regardless of when the offense was committed*, and is a Tier I sex offender/child-victim offender or a child who is or was adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense, *regardless of when the offense was committed*, and is a public registry-qualified juvenile offender registrant." (Emphasis added.)

{¶20} In *Williams*, 2011-Ohio-3374, at ¶8, the Supreme Court concluded that the General Assembly intended for the new registration requirements in the Adam Walsh Act to be applied retroactively. In support of the point, the opinion noted: "R.C. 2950.03, for example, imposes registration requirements for offenders sentenced on or after January 1, 2008, *regardless of when the offense was committed*." (Emphasis added.) *Id.*

{¶21} In stating which Tier I offenders are eligible to move for the termination of

their registration requirements. R.C. 2950.15(A) employs the same language which the *Williams* court referenced from R.C. 2950.03: i.e., “regardless of when the offense was committed.” Given that the cited phrase readily infers that the date of the commission of the sexual crime is irrelevant to determining an offender’s eligibility for termination relief, there is no dispute that the General Assembly intended for R.C. 2950.15 to be applied retroactively. Therefore, since the statutory language is sufficient to satisfy the first part of the retroactivity test, we must now address the issue of whether the provisions of the statute are substantive or remedial.

{¶22} “In *Pratte v. Stewart*, 125 Ohio St.3d 473, 2010-Ohio-1860, * * *, ¶37, we stated that ‘(i)t is well established that a statute is substantive if it impairs or takes away vested rights, affects an accrued substantive right, imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction, or creates a new right. *Van Fossen*, 36 Ohio St.3d at 107, * * *. Remedial laws, however, are those affecting only the remedy provided, and include laws that merely substitute a new or more appropriate remedy for the enforcement of an existing right.’ See [*Bielat*, 87 Ohio St.3d at 352-353], quoting *Miller v. Hixson* (1901), 64 Ohio St. 39, 51, * * * (‘The retroactivity clause nullifies those new laws that “reach back and create new burdens, new duties, new obligations, or new liabilities not existing at the time (the statute becomes effective)” * * *’).” *Williams*, at ¶9.

{¶23} As stated above, R.C. 2950.15 grants a Tier I sexual offender a remedy which never existed in the prior versions of this statutory scheme; i.e., the statute allows for the submission of a written request to terminate the offender’s registration duties in light of his behavior over the preceding ten or more years. Although the trial court can ultimately deny the requested relief if it concludes that the offender has not carried his

burden of proof, the mere ability to file such a motion constitutes a new benefit. Based upon the general statement in *Williams* as to the distinction between substantive and remedial, the fact that R.C. 2950.15 bestows a new benefit could lead to a preliminary conclusion that the statute must be deemed substantive for purposes of the retroactivity analysis. However, in elaborating upon *Williams*' general statement, the Supreme Court has indicated that there can be instances in which the creation of a new statutory right will be considered remedial in nature:

{¶24} “But the creation of a new right – even a new substantive right – is not, by itself, enough to support a claim of unconstitutional retroactivity. We have held that a claim that a statute is substantive and hence unconstitutionally retroactive, ‘cannot be based solely upon evidence that a statute retrospectively created a new right, but must also include a showing of some impairment, burden, deprivation, or new obligation accompanying that new right.’ *Bielat*, 87 Ohio St.3d 350, * * *, paragraph two of the syllabus. The court must inquire ‘whether the creation of rights in one party reciprocally impaired a right of the party challenging the retroactive law. In other words, substantive, retroactive legislation that unconstitutionally creates a new right also impairs a vested right or creates some new obligation or burden as well.’ *Id.* at 359.” *State v. White*, 132 Ohio St.3d 344, 2012-Ohio-2583, ¶46.

{¶25} In this case, the state is the party contesting the retroactive application of R.C. 2950.15. Yet, in delineating the entire procedure for considering and disposing of a motion/application to terminate, the statute does not place a new burden or obligation upon the state. Although the state is permitted to respond to the motion, the offender has both the burden of going forward with the evidence and the final burden of proof. R.C. 2950.15(H)(3). Thus, regardless of whether the new right created in the statute is

“substantive” in nature, that right is clearly not accompanied by the reciprocal imposition of a new burden or obligation. Under such circumstances, the *White* analysis dictates that the retroactive application of R.C. 2950.15 is permissible under Section 28, Article II of the Ohio Constitution.

{¶26} Furthermore, even though many provisions of the Adam Walsh Act were declared unconstitutional as applied to offenders convicted of sex crimes that occurred prior to January 1, 2008, R.C. 2950.15 can be severed from those other provisions. As a general proposition, a three-prong test is employed to determine if a single statute in an otherwise unconstitutional statutory scheme can be severed and still enforced:

{¶27} “(1) Are the constitutional and the unconstitutional parts capable of separation so that each may be read and may stand by itself? (2) Is the unconstitutional part so connected with the general scope of the whole as to make it impossible to give effect to the apparent intention of the Legislature if the clause or part is stricken out? (3) Is the insertion of words or terms necessary in order to separate the constitutional part from the unconstitutional part, and to give effect to the former only?” *State ex rel. Whitehead v. Sandusky Cty. Bd. of Commissioners*, 133 Ohio St.3d 561, 2012-Ohio-4873, ¶28, quoting *Geiger v. Geiger*, 117 Ohio St. 451, 466 (1927).

{¶28} As to the first two prongs of the “severance” test, this court reiterates that R.C. 2950.15 grants a Tier I sexual offender the ability to seek affirmative relief from the registration requirements. In this respect, the statute is clearly distinct from those parts of the Adam Walsh statutory scheme that impose greater registration requirements over longer time periods. Therefore, not only can R.C. 2950.15 stand separately from the other Adam Walsh provisions, but it is readily possible to give full effect to the statute, as intended by the General Assembly, even if the other disputed provisions cannot be

applied retroactively to pre-January 1, 2008 offenders. Finally, there would be no need to insert any new words into the statute in order for it to be applied properly.

{¶29} In enacting R.C. 2950.15 as part of the Adam Walsh statutory scheme, the General Assembly determined that there can be instances in which, after ten years of legal behavior, the risk posed by a Tier I sexual offender is so slight that the benefit of continued monitoring through the registration requirements is significantly outweighed by the state's financial burden. Given that the termination of registration requirements does not result in any new duties or burdens for the state, but only creates a possible benefit for eligible offenders, the constitutional prohibition against retroactive laws does not bar the enforcement of the legislature's intent that all Tier I sex offenders be afforded an opportunity to move for such relief, regardless of when the underlying offense took place. Accordingly, the trial court erred in denying appellant's application to terminate on the grounds that R.C. 2950.15 could not be applied retroactively.

{¶30} In claiming that the foregoing conclusion has the effect of overturning the *Williams* decision, the dissenting opinion does not address the fact that R.C. 2950.15 only creates a new right and does not impose any new burden or duty. Rather, the dissenting opinion simply restates the basic *Williams* holding that the Adam Walsh Act cannot be applied retroactively to a defendant who committed his sex offense prior to the act's enactment. By taking this approach to the "retroactivity" issue, the dissenting opinion fails to acknowledge that the focus of the *Williams* analysis was the punitive nature of many aspects of the Adam Walsh statutory scheme. Given that R.C. 2950.15 has no punitive effect upon the sexual offender or the state, it is not *Williams*, but rather *White* that controls. Thus, while there may be other reasons why appellant is not eligible for relief under R.C. 2950.15, retroactivity is not among them.

{¶31} The dissenting opinion also fails to acknowledge that, although the state asserted a “retroactivity” argument in its response to appellant’s application at the trial level, it has essentially abandoned that argument before this court. In its answer brief, the state now maintains that the trial court should have dismissed the “termination” application on the grounds that appellant cannot qualify for the requested relief as a Tier I sexual offender. In support of this point, the state raises two arguments for review. First, citing *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, the state submits that, since the Ohio Supreme Court has held that sexual offenders who were originally classified under the pre-2008 classification system cannot be re-classified under the Adam Walsh system, appellant will always be designated in the future as either a sexually oriented offender, a habitual sexual offender, or a sexual predator. Second, the state contends that, even if appellant could be re-classified under the new Tier I/Tier II/Tier III system, he could not be designated a Tier I offender because, under Colorado law, he is required to comply with the “registration” requirement for the remainder of his life.

{¶32} As previously noted, appellant initially raised the “re-classification” issue in his motion for a preliminary injunction, which was filed approximately forty days after the submission of his application to terminate. In the motion, appellant moved the trial court to enjoin the State of Ohio from re-classifying him from a Tier I offender to a Tier III offender. On the same date the motion was submitted, the trial court issued a judgment granting a preliminary injunction. Concerning appellant’s status, the judgment ordered that he was to remain a “Tier I” offender until further order of the court. The bottom of the judgment also contained a notation that the state did not oppose appellant staying a “Tier I” offender while the case remained pending.

{¶33} No other proceedings regarding appellant's classification were held prior to the issuance of the trial court's dismissal judgment. In that judgment, the court referenced the fact that a preliminary injunction was granted; however, no final decision was made as to appellant's status under either the "old" classification system or the new Adam Walsh system. Instead, the trial court based its decision to dismiss entirely upon its conclusion that R.C. 2950.15 could not be applied retroactively regardless of appellant's classification.

{¶34} Notwithstanding the fact that the trial court has not rendered a final ruling concerning appellant's status, the dissenting opinion addresses the merits of the point and concludes that appellant cannot invoke R.C. 2950.15 because he is not a Tier I sexual offender. In reaching this conclusion, the dissenting opinion relies in part upon information from the Ohio Attorney General's website that was not before the trial court when it granted the preliminary injunction. Moreover, the dissent does not expressly address the issue of whether, even though appellant cannot be re-classified under the Adam Walsh system for purposes of increasing his registration obligation, he can be re-classified by the trial court for purposes of determining his eligibility for relief under R.C. 2950.15.

{¶35} In *Bodyke*, 2010-Ohio-2424, the Supreme Court concluded that if a sexual offender has previously been classified under the classification system that was in effect prior to January 1, 2008, he could not be re-classified under the new "three-tier" system of the Adam Walsh Act. In reaching this conclusion, the *Bodyke* court did not make any reference to the procedure for terminating a Tier I offender's registration requirements under R.C. 2950.15. Instead, the court primarily focused upon the fact that, in allowing for the re-classification of prior sexual offenders for purposes of imposing longer and

more stringent registration requirements, the General Assembly granted the authority to re-classify to the state attorney general. This grant of authority violated the separation-of-powers doctrine because: (1) it essentially permitted the executive branch of the state government to review previous “classification” orders of the judicial branch; and (2) it mandated the re-opening of final judgments. *Id.* at the second and third paragraphs of the syllabus.

{¶36} Neither of the foregoing two concerns exists if, as part of the procedure for deciding a motion/application to terminate under R.C. 2950.15, a trial court re-classifies a pre-January 1, 2008 sexual offender under the new “three-tier” system. In regard to the “re-opening” concern, this court would emphasize that the re-classification of the offender for purposes of R.C. 2950.15 would have no effect upon his classification for all other purposes under R.C. Chapter 2950. In other words, the duration and nature of the offender’s registration requirements would not be altered as a result of the limited re-classification. Thus, re-classification under R.C. 2950.15 would not affect the finality of the original “classification” determination. To the extent, neither *Bodyke* nor *Williams* prohibits a trial court from re-classifying a pre-January 1, 2008 sexual offender under the new “three-tier” classification system solely for the purposes of deciding the merits of a motion to terminate registration requirements.

{¶37} In reviewing the materials accompanying appellant’s motion for a preliminary injunction, the trial court found the materials sufficient to warrant an interim order that appellant would be considered a Tier I sexual offender. Furthermore, the trial court never overruled the interim order. Thus, in light of our holding on the retroactivity issue, this case must be remanded so that the trial court can conduct a full hearing on the re-classification issue, as raised in the motion for a preliminary injunction, and then

issue a final ruling on appellant's status as a sexual offender for purposes of deciding his eligibility for relief under R.C. 2950.15. As part of this proceeding, the trial court may consider the state's new argument concerning appellant's proper classification under the "three-tier" system. In turn, if the trial court finds that appellant is a Tier I sexual offender, it can proceed to the final merits of the motion to terminate.

{¶38} Pursuant to the foregoing, the judgment of the Trumbull County Court of Common Pleas is reversed, and the case is hereby remanded for further proceedings consistent with this opinion.

TIMOTHY P. CANNON, P.J., concurs in judgment only with a Concurring Opinion,
DIANE V. GRENDALL, J., dissents with a Dissenting Opinion.

TIMOTHY P. CANNON, P.J., concurring in judgment only.

{¶39} I concur this matter should be remanded to the trial court for clarification of appellant's classification status. Appellant, by virtue of his incarceration in 1997, is subject to the requirements of Ohio's Megan's Law. Pursuant to Megan's Law, his status as an offender, for which he was required to register for life due to his Colorado conviction, automatically classified him as a sexual predator. There is, however, significant confusion between the parties, as well as between the lead opinion and dissent, as to the status of this case at the trial court level. This confusion, in my view, may stem from the preliminary injunction issued by the trial court; it is probable the trial court only intended to adopt a Tier I classification for appellant until it issued a determination on the merits of appellant's application. In the preliminary injunction order

there is a handwritten sentence which stands alone, stating: “Petitioner to remain tier I.” There is an additional handwritten notation at the bottom of the order, stating: “No opposition by state of Ohio to defendant remaining tier I until determination of merits.”

{¶40} In the trial court entry that disposed of appellant’s motion, it does not mention whether appellant’s Tier I classification had been terminated. I agree with the dissent that appellant’s Tier I classification should be terminated; appellant was subject to Megan’s Law, as noted by the trial court, and R.C. 2950.15, as amended, does not retroactively apply to appellant. This would effectively defeat appellant’s application because, as observed by the dissent, appellant should not be classified as a Tier I offender.

{¶41} To further complicate matters, there is some confusion regarding whether appellant has been classified as a “sexually oriented offender” or as a “sexual predator” under Megan’s law. While the trial court resolved that appellant was subject to Megan’s Law, it did not establish what the classification under that law should be.

{¶42} I concur with the decision to remand this case to allow the trial court to clarify the termination of appellant’s Tier I status and, hopefully, to resolve what appellant’s status is and should be under Megan’s law.

DIANE V. GRENDELL, J., dissents with a Dissenting Opinion.

{¶43} In the present case, Aaron K. Von filed an Application for Termination of Duty to Comply with Sex Registration Laws, pursuant to R.C. 2950.15, in the Trumbull County Court of Common Pleas. In January 1997, Von was convicted of Sexual Assault on a Child, a class 4 felony in violation of C.R.S. 18-3-405(1), and Sexual

Assault in the Third Degree, a class 1 misdemeanor in violation C.R.S. 18-3-404(1)(A), in the District Court of Arapahoe County, Colorado. Ohio Revised Code 2950.15 was enacted in 2007 as part of the Adam Walsh Child Protection and Safety Act. The trial court denied the Application on the grounds that “at the time of Von’s conviction, there was no provision to terminate one’s status as a registered sex offender post-conviction.” The trial court’s judgment is wholly consistent with the position of the Ohio Supreme Court, that “S.B. 10 [the Adam Walsh Act], 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.” *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, ¶ 20. The majority reverses that judgment on the grounds that “the retroactive application of R.C. 2950.15 is permissible under Section 28, Article II of the Ohio Constitution.” *Supra* at ¶ 25.

{¶44} Revised Code 2950.15 applies to offenders who have been classified as tier I sex offenders. Von has never been classified as a tier I sex offender. Under *Williams*, it would be unconstitutional to apply the Adam Walsh Act to him, as he committed his sex offenses prior to its enactment. As the State correctly points out, the statute is inapplicable to Von on its face. Accordingly, I respectfully dissent.

{¶45} Under the statute, “an eligible offender may make a motion to the court of common pleas * * * of the county in which the eligible offender resides requesting that the court terminate the eligible offender’s duty” to register as a sexual offender. R.C. 2950.15(B). An “‘eligible offender’ means a person who is convicted of, pleads guilty to, was convicted of, or pleaded guilty to a sexually oriented offense or child-victim oriented offense, regardless of when the offense was committed, **and is a tier I sex offender/child-victim offender** * * *, regardless of when the offense was committed,

and is a public registry-qualified juvenile offender registrant.” (Emphasis added.) R.C. 2950.15(A).

{¶46} In order to be an eligible offender, Von must be classified a tier I sex offender/child-victim offender. The tier I classification was created in 2007 by the above-mentioned Adam Walsh Act. The passage of the Adam Walsh Act abolished “[t]he former categories of sexually oriented offender, habitual sex offender, and sexual predator.” *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶ 21. As noted above, the Ohio Supreme Court has held that the provisions of the Adam Walsh Act cannot be applied to offenders who committed their offenses prior to its enactment. *Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, at ¶ 20.

{¶47} In the present case, Von was convicted of sex offenses in 1997, long before the enactment of the Adam Walsh Act. Not only would it be unconstitutional to classify Von under the Adam Walsh Act, there is no evidence that Von has ever been classified as a tier I sex offender. The evidence before this court, consisting of Notices of Registration Duties of Sexually Oriented Offender Or Child-Victim Offender issued between August 2011 and November 2012, variously classifies Von as “(Pre AWA) Sexually Oriented Offender” or “(Pre AWA) Sexual Predator.”¹ Currently, Von is identified on the Ohio Attorney General’s online registry of sex offenders as “(Pre AWA) Sexually Oriented Offender.”

<http://icrimewatch.net/offenderdetails.php?OfndrID=1550971&AgencyID=55149>
(accessed March 4, 2015).

{¶48} The majority’s analysis as to whether R.C. 2950.15 is severable from the Adam Walsh Act and, so, may be applied retroactively despite the holding of *Williams* is

1. The propriety of either classification is not properly before this court.

fundamentally flawed. An “eligible offender” for the purposes of R.C. 2950.15 must be a tier I offender, i.e., an offender classified under the Adam Walsh Act. Von has not been classified as a tier I offender and is constitutionally prohibited from being classified as such.

{¶49} The majority’s position that Von could be reclassified as a tier I sex offender “solely for the purposes of deciding the merits of a motion to terminate registration requirements” is simply incredible. *Supra* at ¶ 36. The Ohio Supreme Court has stated unequivocally: “2007 Am.Sub.S.B. No. 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.” *Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, at the syllabus. R.C. 2950.15 was enacted as part of 2007 Am.Sub.S.B. 10. Von committed a sex offense prior to its enactment. R.C. 2950.15 does not apply to Von.

{¶50} Alternatively, to be an “eligible offender” under R.C. 2950.15, one must be a “tier I sex offender.” R.C. 2950.15(A). Von is not and has never been a tier I sex offender. The statutory provisions for the reclassification of sex offenders who committed their offenses prior to the enactment of 2007 Am.Sub.S.B. No. 10 have been declared unconstitutional. *Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, at paragraphs two and three of the syllabus. R.C. 2950.15 cannot apply to Von.

{¶51} Neither the *Williams* decision nor the *Bodyke* decision countenances the retroactive application of the Adam Walsh Act on an “as applied” basis. Nothing in the Adam Walsh Act provides for the reclassification of sex offenders by trial court judges. Accordingly, the trial court’s judgment must be affirmed and I respectfully dissent.