[Cite as *State v. Chambers*, 2010-Ohio-3559.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BROWN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-07-031
	:	O P I N I O N
- vs -	:	8/2/2010
DEWAYNE A. CHAMBERS,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BROWN COUNTY COURT OF COMMON PLEAS
Case No. 2007-2202

Jessica Little, Brown County Prosecuting Attorney, Mary McMullen, 200 East Cherry Street, Georgetown, Ohio 45121, for plaintiff-appellee

Katherine M. Kelly, Brown County Public Defender, Julie D. Steddom, 134 North Front Street, Ripley, Ohio 45167, for defendant-appellant

BRESSLER, J.

{¶1} Defendant-appellant, Dewayne A. Chambers, appeals from the judgment of the Brown County Court of Common Pleas, convicting him of rape. As alleged in the Bill of Particulars, on April 28, 2007, appellant removed the victim's clothes as she slept and engaged in vaginal intercourse with her. As a result, appellant was indicted on one count of rape in violation of R.C. 2907.02(A)(2), a felony in the first degree, and one count of rape in violation of R.C. 2907.02(A)(1)(c), also a felony in the first degree.

{¶2} Appellant plead guilty to Count 2 of the indictment, under R.C.

2907.02(A)(1)(c), in exchange for dismissal of the remaining charge. Prior to sentencing, the trial court notified appellant that on the basis of his conviction, he was classified as a tier III sex offender and was subject to lifetime registration and community notification requirements.

{¶3} It is from this judgment that appellant now appeals, raising a single assignment of error for our review:

{¶4} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT CLASSIFIED HIM AS A TIER III SEX OFFENDER, BUT FAILED TO HOLD A HEARING, AFTER CONSIDERING THE FACTORS OF R.C. 2950.11(F)(2), TO DETERMINE WHETHER COMMUNITY NOTIFICATION REQUIREMENTS SHOULD BE IMPOSED ON DEFENDANT-APPELLANT, IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION AS IT APPLIES TO THE STATES THROUGH SECTION 5 OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION."

{¶5} Appellant argues that the trial court erred in failing to hold a hearing to determine whether an individual convicted of a tier III sex offense should be subject to the community notification requirements of R.C. 2950.11. We find no merit in appellant's argument.

{¶6} The statute central to this matter is R.C. 2950.11, the revised community-notification provisions of Ohio's Sex Offender Registration and Notification Law contained in Senate Bill 10. 2007 Am.Sub.S.B. No.10, effective June 30, 2007. The Ohio Supreme Court recently held that in the instances where community notification was not required under the former law, the legislature "expressed its will to continue the policy of providing discretion to the sentencing judge" to determine when community

notification best serves the interest of justice, "albeit with additional guidance in the form of the factors now contained at R.C. 2950.11(F)(2)(a)-(k)." *State v. McConville*, 124 Ohio St. 556, 2010-Ohio-958, ¶12. Specifically, the current version of R.C. 2950.11(F)(2) provides that its notification provisions do not apply if "the person would not be subject to the notification provisions of this section that were in the version of this section that existed immediately prior to the effective date of this amendment." Id. at ¶11.

{¶7} Therefore, absent a hearing held sua sponte by the trial court, defendants subject to the provisions of Senate Bill 10 must request a hearing on the issue of community notification relief. R.C. 2950.11(F)(2). Following this motion, the trial court may, in its sole discretion, hold a hearing to determine whether the defendant is "eligible" for relief from community notification, or in other words, whether the defendant would have been subject to the notification provisions under the former law, pursuant to R.C. 2950.11(F)(2)(a)-(k). R.C. 2950.11(F), 2006 Am.Sub.S.B. No. 206. If, and only if, the defendant would not have been subject to the notification provisions under the former law may the trial court then determine whether suspending community notification best serves the interests of justice in the particular case. See *McConville* at ¶12.

{¶8} In the case at bar, appellant and his counsel failed to request a hearing pursuant to R.C. 2950.11(F)(2), or otherwise object, despite ample notice that appellant was subject to community notification. At sentencing, appellant was notified that he would be classified as a tier III sexual offender and the trial court detailed the required reporting duties. For instance, during this hearing, the trial court asked appellant, "[do you] also understand that as a result of this conviction, should you be convicted of it, upon your plea, that it is a tier-three registration offense, in other words, that you would,

for the rest of your life, have to register every 90 days, sir?" Appellant replied "yes." The same day, appellant signed a form entitled "Explanation of Duties to Register as a Sex Offender or Child Victim Offender, Duties commencing on or after January 1, 2008." This form clearly indicated that appellant was subject to community notification. By signing this form, we find that appellant was on notice of his community notification requirements and could certainly have requested a hearing regarding relief at that time.

{¶9} Because appellant or his counsel failed to request a hearing regarding appellant's community notification pursuant to R.C. 2950.11(F)(2), we find that the trial court did not err in failing to hold such a hearing in this case.

{¶10} Therefore, appellant's single assignment of error is overruled.

{¶11} Judgment affirmed.

YOUNG, P.J., and POWELL, J., concur.