[Cite as *Lyttle v. Ohio*, 2012-Ohio-3042.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

DEAN S. LYTTLE,	:	
Appellant,	:	CASE NO. CA2010-04-089
	:	OPINION ON RECONSIDERATION
- vs -	:	7/2/2012
STATE OF OHIO,	:	
Appellee.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV2008-02-0611

Repper, Pagan, Cook, Ltd., Christopher J. Pagan, 1501 First Avenue, Middletown, Ohio 45044, for appellant

Michael T. Gmoser, Butler County Prosecuting Attorney, Lina N. Alkamhawi, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for appellee

RINGLAND, J.

{¶ 1} This matter is before the court on an application for reconsideration filed by appellant, Dean S. Lyttle, pursuant to App.R. 26(A). Appellant requests that we reconsider our December 20, 2010 judgment in which the majority found that the trial court was without jurisdiction to issue a decision in the absence of a petition process. *Lyttle v. State*, 191 Ohio App.3d 487, 2010-Ohio-6277 (12th Dist.) ("*Lyttle II*"). Because the trial court's judgment was

therefore null and void, the majority held that we did not have jurisdiction to review a void order and dismissed the appeal. *Id.*

{¶ 2} Appellant filed a motion to enlarge time and an application for reconsideration more than two years after the original decision. An application for reconsideration "shall be made in writing before the judgment or order of the court has been approved by the court and filed by the court with the clerk for journalization or within ten days of the announcement of the court's decision, whichever is later." App.R. 26(A)(1)(a).

{¶ 3} App.R. 14(B), "Enlargement or reduction of time," states:

{¶ 4} "For good cause shown, the court, upon motion, may enlarge or reduce the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of the prescribed time. * * * Enlargement of time to file an application to reconsider pursuant to App.R. 26(A) shall not be granted except on a showing of extraordinary circumstances."

{¶ 5} We find that such extraordinary circumstances exist in the present case, and therefore grant appellant's motion to enlarge time. The majority's holding in *Lyttle II* was predicated entirely on the lack of a petition process for appellant, thus rendering the decision from which he appealed void. However, the Ohio Supreme Court's subsequent decision in *State v. Palmer*, 131 Ohio St. 278, 2012-Ohio-580, ¶ 17, held that, "[*State v.*] *Bodyke* [126 Ohio St.3d 266, 2010-Ohio-2424] did not invalidate the petition process for sex offenders set forth by R.C. 2950.031(E) and 2950.032(E)." We therefore find appellant's application for reconsideration to be well-taken. Accordingly, we hereby issue the following decision in replacement of *Lyttle II*.

{¶ 6} In his previous appeal in *Lyttle II*, appellant raised two assignments of error which we are now able to reach the merits of in light of *Palmer*:

{¶ 7} Assignment of Error No. 1:

{¶ 8} THE TRIAL COURT ERRED BY HOLDING THAT [APPELLANT'S] OFFENSES REQUIRED HIM TO REGISTER AND VERIFY HIS ADDRESS WITH THE SHERIFF.

{¶ 9} Assignment of Error No. 2:

{¶ 10} THE TRIAL COURT ERRED BY HOLDING THAT THE LAW-OF-THE-CASE DOCTRINE BARRED [APPELLANT'S] CHALLENGE TO HIS REGISTRATION AND ADDRESS VERIFICATION OBLIGATIONS.

{¶ 11} Appellant raises the issue of criminal subject-matter jurisdiction. Subject-matter jurisdiction refers to a court's ability to hear and finally determine a certain criminal charge, including the sentencing of a defendant following conviction and any other penalties imposed. *State v. McCoy*, 94 Ohio App. 165, 166 (4th Dist.1953). *See also Sheldon's Lessee v. Newton*, 3 Ohio St. 494, 499 (1854). The penalty appellant challenges involves the registration requirements associated with his classification as a sexual predator under Megan's Law. Appellant argues that the trial court had no authority to require him to register as a sexual predator because he was released from prison prior to the July 1, 1997 effective date of former R.C. 2950.04(A).

{¶ 12} The defense of lack of subject-matter jurisdiction can never be waived. *State v. Williams*, 53 Ohio App.3d 1, 5 (10th Dist.1988), citing *State v. Shrum*, 7 Ohio App.3d 244 (1st Dist.1982). *See also State v. Wozniak*, 172 Ohio St. 517, 520 (1961). Moreover, lack of subject-matter jurisdiction may be raised at any time, even collaterally in a subsequent or separate proceeding. *Wozniak* at 520; *Williams* at 5; *Shrum* at fn. 2. The issue therefore remains ripe for review.

{¶ 13} In January 1992, appellant was convicted of four counts of gross sexual imposition and sentenced to four consecutive two-year prison terms. Prior to his release from prison, on March 14, 1997, the trial court adjudicated appellant a sexual predator under Megan's Law. Appellant was released from prison on March 18, 1997.

{¶ 14} Former R.C. 2950.04(A)(1) indicates which individuals must register under Megan's Law:

> (a) Regardless of when the sexually oriented offense was committed, an offender who is sentenced for the sexually oriented offense to a prison term, a term of imprisonment, or any other type of confinement and, on or after July 1, 1997, is released in any manner from the prison term, term of imprisonment, or confinement;
>
> (b) Regardless of when the sexually oriented offense was committed, an offender who is sentenced for a sexually oriented offense on or after July 1, 1997, and to whom division (A)(1)(a) of this section does not apply;
>
> (c) If the sexually oriented offense was committed prior to July 1, 1997, and neither division (A)(1)(a) nor division (A)(1)(b) of this section applies, an offender who, immediately prior to July 1, 1997, was a habitual sex offender who was required to register under Chapter 2950. of the Revised Code.

{¶ 15} In *State v. Bellman*, 86 Ohio St.3d 208 (1999), the Ohio Supreme Court first addressed former R.C. 2950.04(A)(1)'s applicability to a sexual predator released from prison prior to the statute's effective date. Bellman was adjudicated a sexual predator in March 1997 and was released from prison prior to July 1, 1997. *Id*. at 209. Bellman appealed his adjudication, arguing that he was not required to register as a sexual predator because he did not fit within any of the statutory classes of individuals required to do so under the statute. *Id*. The Ohio Supreme Court agreed, finding that although the trial court properly classified him as a sexual predator, Bellman had no duty to register because he did not fit within any of the categories listed under R.C. 2950.04(A)(1) due to his release prior to the statute's July 1, 1997 effective date. *Id*. at 212. See also *State v. Taylor*, 100 Ohio St.3d 172, 2003-Ohio-5452 (noting that although the General Assembly could have written the statute to require all sexual predators to register, it simply did not do so).

{¶ 16} This court applied *Bellman* in *State v. Benson*, 12th Dist. No. CA99-11-194, 2000 WL 1221851 (Aug. 28, 2000). In 1975, Benson pleaded guilty to and was convicted of

one count of gross sexual imposition. *Id*. at *1. He was sentenced to a two-to-five year prison term for the offense and was released in 1980. *Id*. Following a hearing in 1999, the trial court adjudicated Benson a sexual predator subject to the registration, verification, and notification requirements of R.C. Chapter 2950. *Id*. In *Benson*, we concluded that the defendant was not subject to the registration requirements of the statute because he did not fit within the plain language of R.C. 2950.04(A) due to his release before July 1, 1997. *Id*. at *8.

{¶ 17} The Ohio Supreme Court recently revisited the issue in *State v. Champion*, 106 Ohio St.3d 120, 2005-Ohio-4098, and expanded its earlier decisions in *Bellman* and *Taylor*. Champion was sentenced in 1978 to an indefinite prison term of two to five years as a result of his guilty plea to one count of gross sexual imposition. *Id*. at ¶ 2. His sentence was ordered to be served concurrently with two other sentences. *Id*. After being paroled in 1989, he was convicted and returned to prison twice on other offenses. *Id*. The state argued that Champion was required to register as a sex offender. *Id*. The *Champion* court disagreed, concluding that "[a] person whose prison term for a sexually oriented offense was completed before July 1, 1997, is not required to register under R.C. 2950.04(A)(1)(a) or periodically verify a current address under R.C. 2950.06(A), even if the person returns to prison on a parole violation for a term served concurrently with the sexually oriented offense." *Id*. at syllabus. The Supreme Court recognized that former R.C. 2950.04 had no application to Champion and could not require him to register under Megan's Law due to his release prior to July 1, 1997. *Id*. at ¶ 11.

{¶ 18} Finally, the *Palmer* court cited *Champion* when stating in dicta that the Megan's Law sex-offender regulations "did not apply to offenders who, like Palmer, completed their sex-offense prison sentences before July 1, 1997." *Palmer*, 2012-Ohio-580 at ¶ 6.

{¶ 19} Like the defendants in *Bellman*, *Taylor*, *Benson*, *Champion*, and *Palmer*,

although appellant was properly classified as a sexual predator, he was released from prison prior to July 1, 1997, and, as a result, does not fit within any of the categories of R.C. 2950.04(A)(1) requiring registration under Megan's Law. Accordingly, the trial court had no authority to impose registration requirements under Megan's Law.

{¶ 20} In light of the foregoing, having found that (1) lack of subject matter jurisdiction is not barred by res judicata and may be raised at any time and (2) that the trial court had no authority to impose registration requirements under Megan's Law, appellant's first and second assignments of error are sustained.

{¶ 21} Judgment reversed and we hereby vacate the March 17, 1997 order to the extent that it required appellant to register and verify his address pursuant to the mandates of Megan's Law.

POWELL, P.J., and HENDRICKSON, J., concur.