[Cite as *In re C.A.*, 2009-Ohio-3303.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

IN RE: C.A.	:	
	:	C.A. CASE NO. 23022
	:	T.C. NO. JC A 2008 8574
	:	(Civil appeal from Common Pleas Court, Juvenile Division)
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O P I N I O N

Rendered on the 2nd day of July, 2009.

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FROELICH, J.

{¶ 1} C.A., a juvenile, appeals from his adjudication as a delinquent in the Montgomery County Court of Common Pleas, Juvenile Division, for rape of a child under age 13, a first degree felony if committed by an adult, and from the trial court's classification of C.A. as a Tier III sex offender.

{¶ 2} C.A. claims that his adjudication was based on insufficient evidence and against the manifest weight of the evidence. He also argues that the juvenile court abused its discretion when it classified him as a "mandatory" Tier III sex offender based on a prior offense and, further, that it lacked jurisdiction to classify him beyond the age of 21.

{¶ 3} For the following reasons, the juvenile court's adjudication will be affirmed. The matter will be remanded for a new classification hearing consistent with this opinion.

I

{¶ 4} The evidence presented at the adjudication hearing reveals the following facts.

{¶ 5} In June 2008, fifteen-year-old C.A. was a resident of the Center for Child and Family Development ("CCFD") in Zanesville, Muskingum County, Ohio. On June 20, 2008, C.A. moved from a room on the second floor to a room on the third floor. T.B., another fifteen-year-old resident, helped C.A. move his clothes and mattress upstairs. Once C.A.'s belongings were on the third floor, C.A. and T.B. engaged in anal and oral sex in C.A.'s room. T.B. testified that he consented to this sexual encounter.

{¶ 6} After C.A. and T.B.'s sexual activity, C.A. obtained lotion from the dayroom on the third floor and asked T.E., an eleven-year-old who was watching television in the dayroom, to help him in his room. T.E. agreed and entered C.A.'s room. C.A. asked T.B. to leave. T.B. left the room, went to his own room, and did not return.

{¶ 7} After T.B. left, C.A. asked T.E. to "clean up some of the stuff behind the bed frame." When T.E. did so, C.A. told T.E. to pull down his pants. T.E. testified that he was surprised and did not want to comply, but he "was afraid and curious at the same time." C.A. pulled down T.E.'s pants, applied lotion to his penis and T.E.'s anus, and "tried sticking his penis in [T.E.'s] butt." T.E. indicated that C.A.'s penis "went into [his] butt for a couple of seconds," and it was painful. T.E. pulled away and told C.A. to stop. C.A. complied. T.E. later spoke with his therapist and his mother about the incident.

{¶ 8} On June 30, 2008, Detective Randy Ritchason, a 28-year veteran of the Zanesville police department, interviewed C.A., T.E., and T.B. During the interview with C.A., Ritchason identified himself, read C.A. his *Miranda* rights, and told C.A. that he was following up on a report of a sexual assault involving two other juveniles. Ritchason informed C.A. that he was a suspect. C.A. responded that the police lie and that he did not want to talk without an attorney. Ritchason ended the interview and informed C.A. that he was being charged with rape. C.A. responded, "Why? They consented." Amanda McGlumphy, a therapist at CCFD, was present during the interview with C.A., and she also heard C.A.'s statement that the sexual encounters were consensual.

{¶ 9} On July 2, 2008, the Zanesville police department filed a complaint against C.A. in the Muskingum County Court of Common Pleas, Juvenile Division, alleging that C.A. had committed rape, in violation of R.C. 2907.02(A)(1)(b), and menacing, in violation of R.C. 2903.22(A), a fourth degree misdemeanor, in connection with the incident with T.E. C.A. subsequently moved to suppress the incriminating

statement that he had made to the police, i.e., that the encounters were consensual. The trial court overruled the motion, finding that C.A.'s statement was voluntary.

{¶ 10} On September 10, 2008, the Muskingum County Juvenile Court held an adjudication hearing, during which T.E., T.B., Detective Ritchason, and others testified on behalf of the State. C.A. did not present any witnesses. At the conclusion of the hearing, the trial court found C.A. to be delinquent for the rape of T.E. and, on the State's motion, dismissed the menacing charge. The Muskingum County Juvenile Court transferred the matter to Montgomery County, where C.A. is a resident, for disposition.

{¶ 11} The Montgomery County Juvenile Court held dispositional and classification hearings on September 26, 2008. During the dispositional hearing, the court found that C.A. was delinquent for having committed rape, an act which would constitute a first degree felony if committed by an adult, and it committed C.A. to the Department of Youth Services for a minimum of 12 months and a maximum period not to exceed when C.A. became 21 years old. The court ordered DYS to review C.A.'s eligibility for placement at Lighthouse Youth Center - Paint Creek for residential treatment in Ross County. C.A. was also ordered to submit a DNA sample.

{¶ 12} At the beginning of the classification hearing, the court asked the counsel if they would "waive the need for testimony." The parties responded affirmatively, and no testimony was presented. The juvenile court judge informed C.A. that he was required to classify him as a juvenile offender registrant due to a prior adjudication and disposition of a sex offense and, because this adjudication was a first-degree felony rape, the court was required to classify him as a Tier III sex offender. The court

determined that C.A. was not a public registry-qualified juvenile offender and was not subject to community notification provisions. However, C.A. would be required to register with the sheriff in the county in which he resides and to verify his address every 90 days for life. Counsel for C.A. objected to the lifetime Tier III classification, arguing that the juvenile court lacked authority to classify a juvenile beyond the age of 21 and that C.A. was not put on notice when he pled to a prior adjudication that it could result in this classification.

{¶ 13} C.A. appeals from his adjudication and his classification, raising four assignments of error.

II

{¶ 14} C.A.'s first and second assignments of error will be addressed together. They state:

{¶ 15} "I. THE ADJUDICATION AGAINST C.A. WAS NOT SUPPORTED BY THE SUFFICIENCY OF THE EVIDENCE."

{¶ 16} "II. THE ADJUDICATION AGAINST C.A. WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 17} In his first and second assignments of error, C.A. claims that his adjudication was based on insufficient evidence and was against the manifest weight of the evidence.

{¶ 18} "A sufficiency of the evidence argument disputes whether the State has presented adequate evidence on each element of the offense to allow the case to go to the jury or sustain the verdict as a matter of law." *In re J.A.*,Montgomery App. No. 23059, 2009-Ohio-2321, at ¶3, citing *State v. Thompkins,* 78 Ohio St.3d 380, 386,

1997-Ohio-52. When reviewing whether the State has presented sufficient evidence to support an adjudication, the relevant inquiry is whether any rational finder of fact, after viewing the evidence in a light most favorable to the State, could have found the essential elements of the crime proven beyond a reasonable doubt. *In re S.E.*, Montgomery App. No. 22458, 2009-Ohio-2898, at ¶13; *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶ 19} In contrast, "a weight of the evidence argument challenges the believability of the evidence and asks which of the competing inferences suggested by the evidence is more believable or persuasive." *In re S.E.* at ¶14; *In re J.A.* at ¶5. When evaluating whether an adjudication is contrary to the manifest weight of the evidence, the appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, and determine whether, in resolving conflicts in the evidence, the trier of fact "clearly lost its way and created such a manifest miscarriage of justice that the [adjudication] must be reversed and a new trial ordered." *Thompkins*, 78 Ohio St.3d at 387, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175; *In re J.A.* at ¶5.

{¶ 20} Because the trier of fact sees and hears the witnesses at trial, we must defer to the factfinder's decisions whether, and to what extent, to credit the testimony of particular witnesses. *State v. Lawson* (Aug. 22, 1997), Montgomery App. No. 16288. However, we may determine which of several competing inferences suggested by the evidence should be preferred. Id.

{¶ 21} The fact that the evidence is subject to different interpretations does not render the adjudication against the manifest weight of the evidence. See *State v.*

Wilson, Montgomery App. No. 22581, 2009-Ohio-525, at ¶14. A judgment of adjudication should be reversed as being against the manifest weight of the evidence only in exceptional circumstances. See *Martin,* 20 Ohio App.3d at 175.

{¶ 22} R.C. 2907.02(A)(1)(b) provides: "No person shall engage in sexual conduct with another * * * when * * * [t]he other person is less than thirteen years of age, whether or not the offender knows the age of the other person."

{¶ 23} "'Sexual conduct' means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse." R.C. 2907.01(A).

{¶ 24} C.A. argues that the State failed to present sufficient credible evidence that he engaged in sexual conduct with another. C.A. claims that T.E. was not threatened, forced or coerced to engage in sexual conduct with him, and that T.E. had an opportunity to leave the room prior to and during the incident. C.A. asserts that T.E. could have simply yelled for help but did not. Finally, C.A. notes that T.E. admitted that he had initially lied to police officers, telling them that C.A. had threatened him.

{¶ 25} Upon review of the record, we find sufficient evidence to support C.A.'s adjudication. According to T.E.'s testimony, T.E. was eleven years old on June 20, 2008. On that date, C.A. came into the dayroom, grabbed some lotion, and asked T.E. to help him in his room. After T.E. entered C.A.'s room, C.A. told T.E. to pull his pants down. Although T.E. did not want to do so, C.A. pulled down T.E.'s pants and put his

penis into T.E.'s anal cavity for several seconds. T.E. testified that he was "scared and it hurt." T.E.'s testimony, if believed, was sufficient to establish that C.A. engaged in sexual conduct with another when that person, T.E., was less than 13 years old. See *In re J.A.* at ¶14.

{¶ 26} Moreover, during the interview with Detective Ritchason, C.A. volunteered that the alleged rape "was consensual." The juvenile court could reasonably construe C.A.'s statement as an admission that sexual conduct with T.E., who was eleven, had occurred.

{¶ 27} C.A. asserts that T.E. could have escaped or yelled for help and that no force was involved. As an initial matter, the record does not support C.A.'s contention that C.A. stopped and retrieved lotion during the sexual conduct, thus providing an opportunity for T.E. to leave C.A.'s room. Rather, T.E. testified that C.A. grabbed the lotion prior to the encounter, that he had no opportunity to escape, and that C.A. was standing between T.E. and the door during the incident. In addition, when the victim is less than 13 years old, R.C. 2907.02(A)(1)(b) does not require the State to prove force or lack of consent.

{¶ 28} C.A. further claims that the adjudication was against the manifest weight of the evidence, because T.E.'s testimony is not credible. T.E. acknowledged that he had initially lied to the police when he told them that C.A. had threatened him, and he testified that he admitted that C.A. had not threatened him when he spoke with officers during a second interview. T.E. explained that his mother told him of the importance of telling the truth, and T.E. stated that he was telling the truth at trial. The trial court apparently credited T.E.'s testimony. The trial court was in the best position to

determine T.E.'s credibility at trial, and we defer to the trial court's determination. *In re J.A.* at ¶14.

{¶ 29} In summary, we find sufficient evidence to support C.A.'s adjudication for rape, in violation of R.C. 2907.02(A)(1)(b), and that the adjudication was not against the manifest weight of the evidence.

{¶ 30} The first and second assignments of error are overruled.

III

{¶ 31} C.A.'s third and fourth assignments of error both relate to his classification as a Tier III sex offender. They state:

{¶ 32} "III. THE TRIAL COURT ABUSED IT[S] DISCRETION WHEN IT CLASSIFIED C.A. AS A MANDATORY TIER III SEX OFFENDER."

{¶ 33} "IV. THE TRIAL COURT ABUSED IT[S] DISCRETION WHEN IT CLASSIFIED C.A. AS A MANDATORY TIER III SEX OFFENDER BASED ON APPELLANT'S PRIOR OFFENSE."

{¶ 34} Beginning with C.A.'s fourth assignment of error, C.A. asserts that the juvenile court erred in concluding that designation as a juvenile offender registrant was mandatory due to C.A.'s prior adjudication. In his third assignment of error, C.A. asserts that the juvenile court had discretion to determine whether to classify him as a Tier I, Tier II, or Tier III sex offender, and the court erred in believing that the Tier III classification was required. C.A. further asserts that the juvenile court lacked jurisdiction to classify him beyond his twenty-first birthday.

{¶ 35} In 2007, the General Assembly enacted Senate Bill 10 ("S.B. 10 ") to implement the federal Adam Walsh Child Protection and Safety Act of 2006. Among

other changes, S.B. 10 modified the classification scheme for sex offenders who are subject to the Act's registration and notification requirements, creating a new three-tiered system and longer registration periods. With respect to adult sex offenders, the offender's classification is based solely on the offense of which the offender was convicted.

{¶ 36} S.B. 10 and prior versions of Ohio's Sex Offender Registration and Notification Act do not limit "sex offenders" to adult offenders. Rather, "sex offender" includes any person who "is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing any sexually oriented offense." R.C. 2950.01(B)(1). "Sexually oriented offense" includes rape in violation of R.C. 2907.02. R.C. 2950.01(A)(1); R.C. 2152.02(Y). C.A. is, therefore, a juvenile sex offender.

{¶ 37} A juvenile court's obligation to classify a juvenile sex offender is governed by portions of both R.C. Chapter 2152 and R.C. Chapter 2950. As with the prior version of the sex offender registration law, under S.B. 10, the juvenile court must engage in a two-step process. First, the juvenile court must determine whether the juvenile is a juvenile offender registrant ("JOR") who is subject to classification and registration. For certain juvenile offenders, this designation is mandatory. See R.C. 2152.82; R.C. 2152.83(A)(1); R.C. 2152.86. If the child falls within R.C. 2152.83(B)(1) – i.e., the offender is 14 or 15 years old, has no prior adjudication for a sexually oriented offense, and is not required to be classified under R.C. 2152.86 – the trial court has discretion to determine whether the juvenile should be a JOR. Although C.A. was 15, he had a prior adjudication for a sexually oriented offense and was required to be designated a JOR. See R.C. 2152.82(A)(1).

{¶ 38} Second, the juvenile court must determine the tier in which to classify the juvenile. The three tiers – Tier I, Tier II, and Tier III - are defined in R.C. 2950.01. As stated above, with respect to adult sex offenders, the statute places offenders within a specific tier based on the offense of which the person has been convicted. The tiers for juvenile sex offenders are defined differently. For example, a Tier III sex offender is defined, in part, as "[a] sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any sexually oriented offense and who a juvenile court, pursuant to R.C. 2152.82 *** of the Revised Code, classifies a tier III sex offender/child-victim offender relative to the offense."

{¶ 39} The juvenile court is obligated to review the classification "upon completion of the disposition." R.C. 2152.84. At this hearing, if the court were previously required to classify the juvenile as a JOR, the court may continue the classification tier or reduce the classification tier, but it cannot determine that the juvenile is no longer a JOR. R.C. 2152.84(A)(2)(c). After at least three years from the juvenile court's order following the review hearing required under R.C. 2152.84, juveniles who are not public registry-qualified juvenile offenders under R.C. 2152.86 may petition the juvenile court for reclassification to a lower tier or declassification. R.C. 2152.85.

{¶ 40} Applying these statutes, the juvenile court classified C.A. as a Tier III sex offender, stating, in part:

{¶ 41} "[C.A.], this a case that I don't have any control over. This is what is called a mandatory classification. You are 15, and the statute is very clear. Because of your prior adjudication and disposition of a sex offense, it is mandatory that I classify

you. And because this adjudication was a first-degree felony rape, this Court is required to classify you as a Tier III sex offender.

{¶ 42} "I am going to determine that you are not a public registry qualified juvenile offender registrant and not subject to community notification provisions. That in reality is the least severe of the three levels of Tier III.

{¶ 43} "You will be required to register in person with the sheriff of the county in which you establish residency within three days.

{¶ 44} "***

{¶ 45} "Because the Court is required to classify you as a Tier III offender, you shall be ordered to have in-person verification every 90 days of your address for your lifetime.

{¶ 46} "***

{¶ 47} "Under Ohio law right now, your classification can never be reduced to the point where you don't have to register. You can be eventually reduced to a Tier I under certain parameters, but you'll never be able to be such that you can be unclassified."

{¶ 48} Initially, C.A. asserts that the trial court erred in classifying him as a mandatory Tier III sex offender based on a prior offense. He argues that he was not placed on notice when he admitted responsibility for a sexually oriented offense in a prior adjudication that his admission could result in a subsequent Tier III classification.

{¶ 49} R.C. 2152.82, the statute under which C.A. was classified,[1] provides, in

[1]In its judgment entry, the trial court stated that it classified C.A. pursuant to R.C. 2152.83(A)(1)(a), (b). This appears to have been a typographical error. At the

part:

{¶ 50} "(A) The court that adjudicates a child a delinquent child *shall* issue as part of the dispositional order an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code if all of the following apply:

{¶ 51} "(1) The act for which the child is adjudicated a delinquent child is a sexually oriented offense or a child-victim oriented offense that the child committed on or after January 1, 2002.

{¶ 52} "(2) The child was fourteen, fifteen, sixteen, or seventeen years of age at the time of committing the offense.

{¶ 53} "(3) The court has determined that the child previously was adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense, regardless of when the prior offense was committed and regardless of the child's age at the time of committing the offense.

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classification hearing, the trial court indicated that C.A.'s classification was mandatory due to his prior adjudication, and the parties had stipulated that C.A. was 15 at the time of the offense; these statements suggest that the trial court, in fact, properly classified C.A. pursuant to R.C. 2152.82(A).

R.C. 2152.83 applies when the juvenile court is not required to classify the juvenile under R.C. 2152.82 or R.C. 2152.86. (R.C. 2152.86 applies when the court is required to classify a juvenile as a public registry-qualified juvenile offender.) R.C. 2152.83(A)(1), cited in the judgment entry, applies to children that were 16 and 17 years old at the time of the offense and makes no reference to prior adjudications; because C.A. was 15 when the offense was committed, R.C. 2152.83(A)(1) was inapplicable to C.A. Under R.C. 2152.83(B)(1), the juvenile court has discretion to determine whether a delinquent child, who was 14 or 15 years old at the time of committing the offense, should be designated a juvenile offender registrant. However, the trial court orally recognized that C.A. had a prior adjudication, making classification under R.C. 2152.82(A)(1) mandatory and R.C. 2152.83(B)(1) inapplicable.

{¶ 54} "(4) The court is not required to classify the child as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant under section 2152.86 of the Revised Code." (Emphasis added.)

{¶ 55} According to the record, in February, 2007, C.A. admitted to committing sexual imposition with a child, in violation of R.C. 2907.06(A)(1), and he was adjudged delinquent by the Montgomery County Juvenile Court based on that conduct. At the time of that offense, a violation of R.C. 2907.06(A)(1) was a sexually oriented offense when the victim was under 18 years of age.

{¶ 56} We find no fault with the trial court's consideration of C.A.'s 2007 adjudication in determining that it was required to designate C.A. a JOR under R.C. 2152.82, despite C.A.'s alleged lack of notice that a subsequent adjudication could result in a mandatory classification. "It is well settled *** that a trial court need not inform a sex offender of the registration and notification requirements of R.C. Chapter 2950 before accepting a plea. We have described the registration and notification requirements as collateral consequences of a defendant's guilty plea [or, in a juvenile's case, an admission] to a sex offense. Therefore, a trial court is not obligated to inform a defendant about these requirements before accepting his plea, and its failure to do so does not render the plea invalid." (Internal citations omitted.) *State v. Cupp*, Montgomery App. Nos. 21176, 21348, 2006-Ohio-1808, at ¶10; *State v. Stape*, Montgomery App. No. 22586, 2009-Ohio-420, at ¶19.

{¶ 57} Significantly, the current version of R.C. 2152.82(A)(1) is substantially similar to the version in effect in 2007 when C.A. made his admission to sexual imposition. The former version of R.C. 2152.82(A)(1) required the juvenile court to

designate a JOR if the child had previously been adjudicated a delinquent child for committing any sexually oriented offense, regardless of the child's age at the time of the offense. Accordingly, although the classification scheme changed after C.A.'s 2007 adjudication, the statutory requirement that a subsequent adjudication for a sexually oriented offense would result in a mandatory classification under R.C. 2152.82 was no different. We find no basis to conclude that the juvenile court could not consider C.A.'s 2007 adjudication when classifying C.A. for rape in 2008, and we find that the court properly applied R.C. 2152.82(A)(1) due to C.A.'s prior adjudication.

{¶ 58} C.A. further claims that the trial court lacked jurisdiction to classify him beyond the age of 21. Under R.C. 2152.82(C), if the juvenile court classifies a juvenile sex offender under R.C. 2152.82(A), "the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division," i.e., the registration period set forth in R.C. 2950.07. Under R.C. 2950.07(B), Tier I sex offenders are required to register for 15 years, Tier II sex offenders are required to register for 25 years, and Tier III sex offenders are required to register for life. R.C. 2152.82(C) thus authorizes the juvenile court to impose a classification order that remains in effect for the duration of the registration period and that extends beyond the juvenile's twenty-first birthday. See *In re D.M.M.*, Montgomery App. No. 22649, 2008-Ohio-3863, at ¶18. This argument is without merit.

{¶ 59} Finally, C.A. claims that the juvenile court erred in concluding that, due to the offense of which C.A. had been adjudicated, it was required to classify C.A. as a Tier III sex offender. We agree.

{¶ 60} Unlike the classifications for adults, the tiers for juvenile sex offenders are not mandated by the offense of which the offender had been convicted. Rather, R.C. 2950.01 defines a juvenile sex offender for each tier as "[a] sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any sexually oriented offense *and* who a juvenile court, pursuant to [R.C.] 2152.82 ***, classifies a tier [I, II, or III] sex offender/child-victim offender relative to the offense." (Emphasis added.) R.C. 2950.01(E)(3), (F)(3), (G)(3).[2]

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[2]Stated more completely, the tier definitions with regard to juvenile offenders are as follows. A Tier I offender is "[a] sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any sexually oriented offense and who a juvenile court, pursuant to [R.C.] 2152.82 ***, classifies a tier I sex offender/child-victim offender relative to the offense." R.C. 2950.01(E)(3).

A juvenile Tier II sex offender includes "[a] sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any sexually oriented offense and who a juvenile court, pursuant to [R.C.] 2152.82 ***, classifies a tier II sex offender/child-victim offender relative to the offense." R.C. 2950.01(F)(3). Under R.C. 2950.01(F)(5), a Tier II sex offender also means:

"A sex offender or child-victim offender who is not in any category of tier II sex offender/child-victim offender set forth in division (F)(1), (2), (3), or (4) of this section, who prior to January 1, 2008, was adjudicated a delinquent child for committing a sexually oriented offense ***, and who prior to that date was determined to be a habitual sex offender ***, unless either of the following applies:

"(a) The sex offender *** is reclassified *** as a tier I sex offender *** or a tier III sex offender ** relative to the offense.

"(b) A juvenile court, pursuant to section 2152.82 *** of the Revised Code, classifies the child a tier I sex offender/child-victim offender or a tier III sex offender/child victim offender relative to the offense."

Similarly, a Tier III sex offender is defined, in part, as:

"(3) A sex offender who is adjudicated a delinquent child for committing or has been adjudicated a delinquent child for committing any sexually oriented offense and who a juvenile court, pursuant to R.C. 2152.82 *** of the Revised Code, classifies a tier III sex offender/child-victim offender relative to the offense.

"***

"(5) A sex offender *** who is not in any category of tier III sex offender/child-victim offender set forth in division (G)(1), (2), (3), or (4) of this section, who prior to

{¶ 61} Unlike the classification procedures for adult sex offenders, R.C. 2152.831(A) explicitly requires the juvenile court to conduct a hearing prior to classifying a delinquent child pursuant to R.C. 2152.82 or R.C. 2152.83 "to determine whether to classify the child a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender." This provision would be superfluous if the juvenile court's classification determination were merely a ministerial act based solely on the offense that the delinquent child had committed. Thus, the determination of the tier classifications for juveniles implicitly includes a discretionary determination by the juvenile court as to the tier classification for the juvenile sex offender.

{¶ 62} The Supreme Court has recognized that "[s]ince its origin, the juvenile justice system has emphasized individual assessment, the best interest of the child, treatment, and rehabilitation, with a goal of reintegrating juveniles back into society." *State v. Hanning* (2000), 89 Ohio St.3d 86, 88. Juvenile sex offender classification statutes that grant the juvenile courts discretion to determine the appropriate tier in which to classify a JOR further these goals.

{¶ 63} Several appellate districts and the Ohio Attorney General have reached

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January 1, 2008, *** was adjudicated a delinquent child for committing a sexually oriented offense *** and classified a juvenile offender registrant, and who prior to that date was adjudicated a sexual predator ***, unless either of the following applies:

"(a) The sex offender *** is reclassified *** as a tier I sex offender/child-victim offender or a tier II sex offender/child-victim offender relative to the offense.

"(b) The sex offender *** is a delinquent child, and a juvenile court, pursuant to section 2152.82 *** of the Revised Code, classifies the child a tier I sex offender/child-victim offender or a tier II sex offender/child-victim offender relative to the offense." R.C. 2950.01(G)(3), (5).

this same conclusion. *In re G.E.S.*, Summit App. No. 24079, 2008-Ohio-4076, appeal allowed, 120 Ohio St.3d 1504, 2009-Ohio-361; *In re P.M.*, Cuyahoga App. No. 91922, 2009-Ohio-1694, at ¶5; *In re Antwon C.*, Hamilton App. No. C-080847, 2009-Ohio-2567, at ¶13-17; *In re S.R.P.*, Butler App. No. CA2007-11-027; 2009-Ohio-11, at ¶42-45. But, see, *In re Smith*, Allen App. No. 1-07-58, 2008-Ohio-3234, appeal allowed, 120 Ohio St.3d 1416, 2008-Ohio-6166.

{¶ 64} The State argues that the legislature did not intend for the juvenile court to exercise discretion at the hearing under R.C. 2152.831, because the legislature failed to provide factors or other guidance as to how the court would exercise its discretion. The State notes that where the juvenile court expressly is given discretion, such as in determining whether a delinquent child is a JOR under R.C. 2152.83(B)(1), the statute sets forth relevant favors to consider. See R.C. 2152.83(D). We are not persuaded by the State's argument. Although the General Assembly has elected to provide factors for the juvenile court to consider under R.C. 2152.83(D), the absence of factors or other guidance under R.C. 2152.831 is not equivalent to a declaration that the court lacks discretion. Moreover, the legislature's failure to expressly state that the tier was to be established by the offense and that the hearing was to serve merely as an opportunity to notify the juvenile of the classification logically leads to the conclusion that the legislature intended for the juvenile court to exercise discretion at the hearing to determine the appropriate tier.

{¶ 65} The State further asserts that the phrase "relative to the offense" in the definitions of Tier I, Tier II, and Tier III for juvenile sex offenders means that the classification tier must be based on the offense for which the delinquent child was

adjudicated. As quoted above, a Tier III offender includes a delinquent child who is adjudicated for committing "any sexually oriented offense and who a juvenile court, pursuant to [R.C.] 2152.82 ***, classifies a tier III sex offender/child-victim offender *relative to the offense*." (Emphasis added.) R.C. 2950.01(E)(3). Tier I and Tier II juvenile sex offenders are defined similarly. See, supra, fn.2. The State argues:

{¶ 66} "Since a juvenile court adjudicates a juvenile a 'delinquent child' when the juvenile violates any law that would be an offense if committed as an adult, it necessarily follows that a juvenile court must look to R.C. 2950.01(E)-(G), which defines the Tier categories by offense for adults, to determine whether a juvenile offender is a Tier I, Tier II, or Tier III sex offender *relative to the offense* they committed. R.C. 2152.02(F)(1).

{¶ 67} "Support can be found in R.C. 2950.032, where the same language is used and the same procedure is directed to the Attorney General's Office when reclassifying both adults and juveniles into Tier categories. Specifically, R.C. 2950.032(A)(1)(b) directs the Attorney General's Office to reclassify a delinquent child classified as a JOR '*relative to a sexually oriented offense*.' The statute instructs the Attorney General's Office to *determine* the delinquent child's classification relative to that offense as a Tier I, Tier II, or Tier III sex offender '*as it will exist under the changes in that Chapter that will be implemented on January 1, 2008* ***.' Notably, the Attorney General's Office reclassified JORs as Tier I, Tier II, or Tier III sex offenders *based upon the offense committed*, as if committed as an adult pursuant to R.C. 2950.01(E)-(G)." (Emphasis sic.)

{¶ 68} We do not read "relative to the offense" to mean that the juvenile court's

decision must be controlled by the offenses listed under each tier for adult sex offender classification and impose the tier that the juvenile would have received if the juvenile were an adult. If the General Assembly had intended to require the juvenile court to classify a juvenile offender based exclusively on the offense for which the child was adjudicated, it could have simply stated, for example, that a Tier III offender includes a delinquent child who is adjudicated for committing any sexually oriented offense identified in R.C. 2950.01(G)(1) and who a juvenile court classifies as a JOR. Tiers I and II could have been defined with similar language, clarifying that, when a juvenile court classifies a JOR, the court must impose the tier that the juvenile would have received if the child were an adult. The phrase "relative to the offense" imposes no such limitations on the juvenile court.

{¶ 69} Based on definitions of the three tiers for juveniles, the hearing provision set forth in R.C. 2152.831, and the goals of juvenile adjudications, we conclude that a juvenile court has discretion to determine the appropriate tier in which to classify a juvenile sex offender. Thus, the trial court erred in classifying C.A. a Tier III sex offender on the ground that such a classification was "required" by C.A.'s adjudication for rape, in violation of R.C. 2907.02(A)(1)(b).

{¶ 70} We note that we have previously written that juvenile tier classifications are mandatory. *In re S.R.B.*, Miami App. No. 08-CA-8, 2008-Ohio-6340, at ¶7-8. In *S.R.B.*, a sixteen-year-old juvenile admitted to and was adjudicated a delinquent for committing one count of rape, in violation of R.C. 2907.02(A)(1)(b), with a girl under the age of thirteen. The juvenile court classified S.R.B. as a Tier III sex offender subject to community notification. On appeal, we stated:

{¶ 71} "In this case, the offense that S.R.B. admitted required, by definition, that the court classify him as a Juvenile Offender Registrant/Tier III sex offender. See R.C. 2152.83(A)(1), R.C. 2950.01(A)(1), (G)(1)(a), (M). This classification is non-discretionary, and is based upon the conviction for Rape, R.C. 2907.02(A)(1)(b) after January 1, 2002, while the offender was sixteen years old.

{¶ 72} "While the above classification is mandatory, the decision to impose community notification requirements was discretionary with the trial court. ***." *In re S.R.B.* at ¶7-8.

{¶ 73} Although the above statements imply that we view classifications for juveniles to be determined in the same manner as for adult sex offenders, *S.R.B*. is not binding precedent. The assignments of error in *S.R.B.* concerned whether the juvenile court appropriately required community notification as part of his Tier III classification, not whether the juvenile court employed the wrong analysis in determining whether he should be classified as a Tier III sex offender. In addition, unlike C.A., S.R.B. was 16 years old and was classified under R.C. 2152.83(A)(1).

{¶ 74} However, to the extent that we held that S.R.B.'s Tier III classification was mandatory, we believe that statement was not correct; we did not consider the differences in the tier definitions for adults and juveniles, and we supported our comment that S.R.B.'s classification as a Tier III sex offender was "non-discretionary" based upon his "conviction" for rape by citing R.C. 2950.01(G)(1), which sets forth the offenses that require Tier III classification for adults. In short, any expression in *S.R.B.* that a juvenile's classification was mandated solely by the offense of which the child was adjudicated was not supported with the relevant statutory provisions, and, to the

extent that it is not dicta, that conclusion is hereby overruled.

{¶ 75} It is easy to see how such interpretative missteps might occur. The Byzantine statutory labyrinth created by Chapters 2152 and 2950 tests any court's interpretative abilities. See, *S.R.B.* at ¶6 ("The enactment of the 'Adam Walsh Law' by the Ohio legislature has resulted in a confusing array of very poorly worded statutory provisions ***."); *Gildersleeve v. State*, Cuyahoga App. Nos. 91515, 91519, 91521, 91532, 2009-Ohio-2031, at ¶56 (agreeing "wholeheartedly with the Second District's frustration" regarding the confusing nature of S.B.10's provisions). Indeed, the Ohio Attorney General, who is designated a significant role in the administration of S.B.10's provisions, has also reversed its position on the meaning of S.B.10's juvenile provisions. In its amicus curiae brief in *Smith*, the Ohio Attorney General acknowledged that it had previously described the juvenile sex offender provisions as providing no "discretion on which tier classification to impose" at the hearing under R.C. 2152.831, but "has now determined that that interpretation was incorrect" and that "the relevant code provisions unmistakably afford discretion to the juvenile courts when fixing tier classifications for juvenile offenders." *In re Smith*, Supreme Court Case No. 2008-1624 , at pp. 11-12 (Brief of Amicus Curiae Ohio Attorney General in support of Neither Party).

{¶ 76} Since C.A. was 15 years old and had a previous adjudication for a sexually oriented offense, the juvenile court was required to designate him a JOR and to order him to comply with the relevant provisions of R.C. Chapter 2950. But to the extent that the legislature's intent is expressed in the Revised Code's provisions (and lack of provisions), juvenile sex offenders are to be treated differently from adult sex

offenders and are to be classified, within the court's discretion, depending on, among other non-delineated factors, the offense, their age, and their record.

{¶ 77} C.A.'s fourth assignment of error is overruled. C.A.'s third assignment of error is sustained to the extent that it asserts that the trial court erred in classifying C.A. as a Tier III sex offender on the ground that it was required to so classify him based on his offense. In all other respects, the assignment of error is overruled.

IV

{¶ 78} C.A.'s adjudication for rape, in violation of R.C. 2907.02(A)(1)(b) will be affirmed. C.A.'s classification as a Tier III sex offender will be reversed, and the matter will be remanded to the juvenile court for a new classification hearing.

. . . . . .

BROGAN, J. and HARSHA, J., concur.

(Hon. William H. Harsha, Fourth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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