[Cite as *State v. Juergens*, 2010-Ohio-6482.]

IN THE COURT OF APPEALS OF CLARK COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 09CA0076
vs.	:	T.C. CASE NO. 99CR0203
NICHOLAS JUERGENS	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

. . . . . .

O P I N I O N

Rendered on the 29th day of December, 2010.

. . . . . .

Stephen Schumaker, Pros. Attorney; Amy M. Smith, Asst. Pros. Attorney, Atty. Reg. No.0081712, 50 East Columbia Street, 4th Floor, P.O. Box 1608, Springfield, OH 45501
Attorneys for Plaintiff-Appellee

Richard E. Mayhall, Atty. Reg. No.0030017, 101 N. Fountain Avenue, Springfield, OH 45502
Attorney for Defendant-Appellant

. . . . . .

GRADY, J.:

{¶ 1} Defendant, Nicholas Juergens, appeals from an order of the court of common pleas that overruled Juergens' motion contesting his obligation to register as a sexual offender.

{¶ 2} In 1999, Juergens pled guilty to the offense of abduction in violation of R.C. 2905.02. The trial court imposed community

control sanctions, which it subsequently revoked. Juergens was then sentenced to a two-year prison term.

{¶ 3} Though the trial court had not imposed registration and/or notification requirements on Juergens arising from his classification as a sexually oriented offender, based on his conviction for abduction, a sheriff's deputy gave Juergens a form so stating after his conviction. Juergens signed and acknowledged receipt of that notice.

{¶ 4} Following the General Assembly's adoption of S.B. 10, Ohio's version of the Adam Walsh Act, in 2007, the Attorney General reclassified Juergens a Tier II sexual offender. On April 9, 2009, Juergens filed a motion pursuant to R.C. 2950.031 and 2950.032 challenging his reclassification on six specific grounds. Juergens asked the court to find that he is not subject to reclassification and to enjoin enforcement of his reclassification as a Tier II sexual offender.

{¶ 5} The trial court summarily overruled Juergens' motion on July 9, 2009, relying on our holding in *State v. Barker*, Montgomery App. No. 22963, 2009-Ohio-2774, which rejected many of the same constitutional grounds which Juergens' motion invoked. Juergens appeals from that final order.

ASSIGNMENT OF ERROR

{¶ 6} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN

IT OVERRULED APPELLANT'S MOTION CONTESTING HIS OBLIGATION TO REGISTER AS A SEX OFFENDER."

{¶ 7} In *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, the Supreme Court found the reclassification provisions of R.C. 2950.031 and 2950.032 unconstitutional and ordered those sections severed from the remaining sections of R.C. Chapter 2950, which otherwise survive. The Supreme Court held "that after severance, [R.C. 2950.031 and R.C. 2950.032] may not be applied to offenders previously adjudicated under Megan's Law, and the classifications and community-notification and registration orders previously imposed by judges are reinstated." *Id.*, at ¶66.

{¶ 8} The severance of R.C. 2950.031 and 2950.032 nullifies the statutory right of appeal from his reclassification that Juergens' motion invoked. Furthermore, the holding in *Bodyke* affords Juergens the relief from reclassification that his motion sought. Therefore, any error the trial court may have committed when it summarily overruled Juergens' motion is moot.

{¶ 9} The State concedes that *Bodyke* prevents Juergens' reclassification, but further argues that, per *Bodyke,* any prior classification as a sexually oriented offender to which Juergens is subject must be reinstated. *Bodyke* imposed that reinstatement requirement to classifications and community notification and registration orders that were "previously imposed by judges."

{¶ 10} ***Bodyke*** **held that the administrative reclassification by the Attorney General mandated by R.C. 2950.031 and 2950.032 violates the separation of powers doctrine because that reclassification necessarily modifies a prior judicial order of classification. The State relies on** ***State v. Green***, **Hamilton App. No. C-090650, 2010-Ohio-4371, which held that absent a prior judicial classification the separation of powers doctrine is not offended by a "reclassification" by the Attorney General, and therefore a defendant who was convicted of a sexually oriented offense for whom no judicial classification hearing was held may be reclassified pursuant to R.C. 2950.031 and 2950.032 by the Attorney General.**

{¶ 11} **Sexually oriented offender classifications attach by operation of law to persons convicted of an offense identified by R.C. 2950.031 as a sexually oriented offense.** ***State v. Hayden***, **96 Ohio St.3d 211, 2002-Ohio-4169. Nevertheless, the sentencing court must conduct a hearing when sentence is imposed and notify the offender of his classification and pronounce the attendant community notification and registration requirements in order for those matters to apply to an offender thus classified by law. That was not done in** ***Green***.

{¶ 12} **In 1999, the offense of abduction in violation of R.C. 2905.02 of which Juergens was convicted was not among those offenses**

identified by R.C. 2905.01 as a sexually oriented offense, unless the victim was less than eighteen years of age. The charge of abduction in Count One of the indictment to which Juergens pled guilty makes no mention of the victim's age.[1] Not having been convicted of a sexually oriented offense, unlike the defendant in *Green*, Juergens was not subject to registration or notification requirements applicable to sexually oriented offenders, and no such notification or requirements were imposed by the court in its judgment of conviction. No such requirements having been "previously imposed" by a judge, *Bodyke*, Juergens is not subject to reinstatement of a prior sexual offender classification or its attendant requirements pursuant to *Bodyke*. Neither is Juergens subject to reclassification, per the holding in *Green*, because Juergens was not convicted of a sexually oriented offense.

{¶ 13} The State conceded at oral argument that it has not prosecuted Juergens for any violation of duties imposed on him as a sexual offender arising from his conviction for abduction. Defendant argued that he is nevertheless aggrieved because the Clark County Sheriff identifies Juergens as a sexual offender on an internet web site maintained by the Sheriff's office, and that

[1] Count Two, charging the offense of kidnaping, alleges that the victim of that offense was under the age of thirteen. The State dismissed Count Two in consideration of Defendant's plea of guilty to the abduction charge in Count One.

Juergens suffers private disabilities as a result. Juergens argues that the Sheriff has refused to remove Juergens' name from the sexual offender web site, most likely because Juergens acknowledged receipt of a notification given to him by a deputy sheriff that he is classified as a sexual predator as a result of his abduction conviction.

{¶ 14} R.C. 2950.11 imposes extensive community notification procedures on county sheriffs concerning persons who have been convicted of sexually-oriented offenses. The record does not reflect whether the Sheriff of Clark County has undertaken the action of which Juergens complains pursuant to R.C. 2950.11 or any related section of the Revised Code. However, if Juergens believes the Sheriff is acting improperly, Juergens may commence an action for declaratory and injunctive relief pursuant to R.C. 2721.01, et seq. Mandamus is inappropriate if it would not provide effective relief unless accompanied by an ancillary injunction, in which case a remedy in injunction must be pursued. *State ex rel. Satow v. Gausse-Milliken*, 98 Ohio St.3d 479, 2003-Ohio-2074.

{¶ 15} The assignment of error is overruled. The judgment of the trial court will be affirmed.

DONOVAN, P.J. And FAIN, J., concur.

Copies mailed to:

Amy M. Smith, Esq.
Richard E. Mayhall, Esq.
Hon. Douglas M. Rastatter