

[Cite as *State v. Murphy*, 2012-Ohio-3850.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. CA 24887
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2011-CR-2787
v.	:	
	:	
OMAR M. MURPHY	:	(Criminal Appeal from Montgomery County Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

.....

OPINION

Rendered on the 24th day of August, 2012.

.....

MATHIAS H. HECK, JR., Prosecuting Attorney, and JOHNNA M. SHIA, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45422  
Plaintiff-Appellant

D.K. RUDY WEHNER, PUBLIC DEFENDER, and TINA M. MCFALL, 117 South Main Street, Suite 400, Dayton, Ohio 45422  
Defendant-Appellee

.....

FRENCH, J.

{¶ 1} The State of Ohio appeals the trial court’s termination entry ordering Defendant-Appellee, Omar M. Murphy (“Appellee”), to serve a sentence of community

control for failing to notify the sheriff of an address change as required by R.C. 2950.05.

{¶ 2} In its sole assignment of error, the State contends the trial court erred in imposing a sentence of community control rather than a statutorily required three-year sentence.

{¶ 3} Appellee was convicted of rape in 2002. Following his release from prison, he was required to register as a sex offender and periodically to notify the sheriff of his new address. In October 2011, Appellee pled guilty to a charge of failing to notify in violation of R.C. 2950.05, a fifth-degree felony. The trial court sentenced him to community control. The State timely appealed.

{¶ 4} The State contends that the trial court should have imposed a mandatory three-year prison sentence under the 2007 S.B. 97 version of R.C. 2950.99 in effect when Appellee committed his failure-to-notify violation. The State acknowledges that this argument is contrary to this court's holding in *State v. Milby*, 2d Dist. Montgomery No. 23798, 2010-Ohio-6344. The State urges us, however, to reconsider *Milby*.

{¶ 5} Upon review, we decline the State's invitation to reconsider *Milby*. Rather, under the doctrine of stare decisis, we continue to adhere to *Milby* and subsequent cases in which this court has held that the enhanced penalties established by the Adam Walsh Act may not be applied to a person who committed a sexually oriented offense and was classified as a sex offender prior to the enactment of 2007 S.B. 97, which became effective on January 1, 2008. See *State v. Muldrew*, 2d Dist. Montgomery No. 24721, 2012-Ohio-1573, and cases cited therein.

{¶ 6} Accordingly, we overrule the State's assignment of error. We affirm the

judgment of the Montgomery County Court of Common Pleas.

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FAIN and FROELICH, JJ., concur.

(Hon. Judith L. French, Tenth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

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