**[Cite as *State v. Bizzell*, 2015-Ohio-1746.]**

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

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| STATE OF OHIO | : | |
| | : | Appellate Case No. 26260 |
| Plaintiff-Appellee | : | |
| | : | Trial Court Case No. 14-CR-341 |
| v. | : | |
| | : | (Criminal Appeal from |
| ADRIAN A. BIZZELL | : | Common Pleas Court) |
| | : | |
| Defendant-Appellant | : | |
| | : | |

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O P I N I O N

Rendered on the 8th day of May, 2015.

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HALL, J.

**{¶ 1}** Adrian Bizzell appeals from his conviction and sentence following a no-contest plea to one count of failure to provide notice of a change of residence in

violation of R.C. 2950.05.

**{¶ 2}** Bizzell advances two assignments of error. First, he contends the evidence was legally insufficient to prove that he recklessly failed to provide notice. Second, he alleges ineffective assistance of counsel based on his attorney's recommendation to plead no contest even though the indictment did not allege a mens rea.

**{¶ 3}** The record reflects that Bizzell, a registered sex offender, was charged with not providing notice of his change of residence as required by statute. Based on the degree of his underlying sex offense, the failure-to-notify charge was a third-degree felony. Bizzell pled no contest. The trial court found him guilty and imposed a twelve-month prison sentence to be served concurrently with prior sentences in other cases.

**{¶ 4}** In his first assignment of error, Bizzell cites *State v. Johnson*, 128 Ohio St.3d 107, 2010-Ohio-6301, 942 N.E.2d 347, to support the proposition that a failure-to-notify conviction requires proof of a mens rea of recklessness. Bizzell then argues: "The State failed to prove that Appellant recklessly failed to provide advance notice of a move to law enforcement before obtaining a conviction. As a result, the evidence was insufficient to convict Appellant of this offense and this Court should vacate such conviction." (Appellant's brief at 4). In making this argument, Bizzell asserts that the statute criminalizing failure to provide notice of a change of residence, R.C. 2950.05, "did not have to expressly include a mental state because R.C. 2901.21(B) imposes a reckless mens rea in the absence of plain language to the contrary." (*Id*.). In his second assignment of error Bizzell argues that his attorney provided ineffective assistance by advising him to plead no contest where the indictment was defective for not including a

reckless mens rea, even though the statute itself requires none.

**{¶ 5}** Upon review, we find no merit in either assignment of error. As an initial matter, this court has held that a sex-offender's failure to provide notice of a change of residence in violation of R.C. 2950.05 is a strict-liability offense. *State v. Stansell*, 2d Dist. Montgomery No. 23630, 2010-Ohio-5756, ¶ 17-21. In *State v. Moody*, 2d Dist. Greene No. 2011-CA-29, 2013-Ohio-2234, we did recognize an argument that under *Johnson*, supra, R.C. 2901.21(B) arguably could supply a mental state of recklessness to the failure-to-notify statute. Although we had no need to resolve that issue in *Moody*, we expressed doubt about whether *Johnson* actually undermined *Stansell* and other cases identifying failure-to-notify as a strict-liability offense. *Id*. at ¶ 6, fn.2.

**{¶ 6}** More recently, the First District Court of Appeals has reaffirmed that failure-to-notify remains a strict-liability offense after *Johnson*, and we have found no authority to the contrary. In *State v. Smith*, 1st Dist. Hamilton No. C-130571, 2014-Ohio-4030, the appellate court explained:

> In *State v. Johnson*, 128 Ohio St.3d 107, 2010–Ohio–6301, 942 N.E.2d 347, paragraph two of the syllabus, the Ohio Supreme Court held that "R.C. 2901.21(B) does not supply the mens rea of recklessness unless there is a complete absence of mens rea in the section defining the offense and there is no plain indication of a purpose to impose strict liability." Specifically, *Johnson* held that a conviction under R.C. 2923.13(A)(3) for having weapons while under a disability does not require proof of a culpable mental state for the element that the offender has been convicted of a drug

offense. *Id.* at paragraph one of the syllabus.

> Smith argues that *Johnson* requires the application of R.C. 2901.21(B) to supply the mental state of recklessness to alleged violations of the sex-offender notification and registration statutes because they do not contain a mental state. We disagree. Ohio has a long line of precedent recognizing that the General Assembly's plain purpose was to impose strict liability for violations of R.C. Chapter 2950. We do not see how the holding in *Johnson* changes that analysis. *See State v. Stewart*, 8th Dist. Cuyahoga No. 94863, 2011–Ohio–612 (noting *Johnson* in holding that the Adam Walsh Act version of R.C. 2950.05 is a strict-liability offense, and declaring that "until the Supreme Court holds that a violation of R.C. 2950.05 is not a strict liability offense, we continue to follow the law in our district").

*Id*. at ¶ 10-11.

**{¶ 7}** Upon review, we agree with the First District that failure-to-notify in violation of R.C. 2950.05 remains a strict-liability offense. Even assuming arguendo that we were to conclude otherwise, Bizzell's assignments of error still would lack merit. As an initial matter, he waived his challenge to the adequacy of the indictment by pleading no contest without objecting to it. *See*, *e.g.*, *State v. Griffin*, 8th Dist. Cuyahoga No. 92728, 2010-Ohio-437, ¶ 9.

**{¶ 8}** With regard to the second assignment of error, we note that "[a]n indictment that charges an offense by tracking the language of the criminal statute is not defective for failure to identify a culpable mental state when the statute itself fails to specify a mental

state." (Citatons omitted.) *State v. Horner*, 126 Ohio St. 3d 466, 2010-Ohio-3830, 935 N.E.2d 26, at paragraph one of the syllabus. We find that to be the case here. *Cf. State v. Savors*, 7th Dist. Columbiana No. 99-CO-32, 2010-Ohio-6084, ¶ 19 ("The statute at issue, R.C. 2950.05(A), does not contain a culpable mental state. * * * Therefore, pursuant to *Horner*, the indictment was not defective for failing to include a mens rea element. * * * Furthermore, failure to register is a strict liability offense."). Accordingly, defense counsel did not provide ineffective assistance by failing to object to the indictment, because the indictment was not defective, or by allowing Bizzell to plead to it.[1] Bizzell's argument about the legal sufficiency of the "evidence" also fails because he pled no contest after a proper recitation of the charge that tracked the language of both the indictment and the statute and that accused him of failing to provide the required notice of his change of residence. (Tr. at 8-10).

**{¶ 9}** Bizzell's assignments of error are overruled, and the judgment of the Montgomery County Common Pleas Court is affirmed.

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FROELICH, P.J., and WELBAUM, J., concur.

Copies mailed to:

Mathias H. Heck
Michele D. Phipps
Adam J. Arnold
Hon. Steven K. Dankof

[1] Parenthetically, we note that defense counsel reasonably may have elected to recommend the plea agreement in this case, which provided for a concurrent one-year prison sentence, rather than raise a questionable challenge.