

IN THE COURT OF APPEALS OF OHIO  
THIRD APPELLATE DISTRICT  
MERCER COUNTY

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STATE OF OHIO,

PLAINTIFF-APPELLEE,

CASE NO. 10-14-12

v.

COLTON R. MARTIN,

OPINION

DEFENDANT-APPELLANT.

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Appeal from Mercer County Common Pleas Court  
Trial Court No. 13-CRM-069

Judgment Affirmed

Date of Decision: April 6, 2015

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APPEARANCES:

*Scott R. Gordon* for Appellant

*Matthew K. Fox* for Appellee

**PRESTON, J.**

{¶1} Defendant-appellant, Colton R. Martin (“Martin”), appeals the September 5, 2014 judgment entry of the Mercer County Court of Common Pleas. For the reasons that follow, we affirm.

{¶2} On April 4, 2013, the Mercer County Grand Jury indicted Martin on two counts: Count One of sexual battery in violation of R.C. 2907.03(A)(1)(2), a third-degree felony, and Count Two of gross sexual imposition in violation of R.C. 2907.05(A)(4), a fourth-degree felony. (Doc. No. 1).

{¶3} On August 22, 2013, Martin appeared for arraignment and entered pleas of not guilty. (Doc. No. 35).

{¶4} On March 19, 2014, Martin withdrew his pleas of not guilty and entered a guilty plea, under a written plea agreement, to Count Two. (Doc. Nos. 59, 60, 64). In exchange for his change of plea, the State agreed to dismiss Count One and make no recommendations at sentencing. (Doc. No. 60, 61). The trial court accepted Martin’s guilty plea, found him guilty on Count Two, dismissed Count One, and ordered a presentence investigation. (Doc. No. 64).

{¶5} On May 12, 2014, Martin filed a “Motion to Dismiss Indictment/Complaint.” (Doc. No. 71). On June 17, 2014, the trial court concluded that “Megan’s Law,” and not the “Adam Walsh Act,” applied to the

disposition of Martin’s case. (Doc. No. 76). In that same judgment entry, the trial court denied Martin’s motion to dismiss. (*Id.*).

{¶6} On September 5, 2014, the trial court classified Martin as a sexually oriented offender. (Doc. No. 83). That same day, the trial court notified Martin of his registration requirements—that is, Martin was ordered to register annually for a period of ten years after his initial registration. (Doc. No. 84). Also on that day, the trial court sentenced Martin to community-control sanctions. (Doc. No. 87). The trial court filed its sentencing entry on September 11, 2014. (*Id.*).

{¶7} On September 25, 2014, Martin filed a notice of appeal. (Doc. No. 97).

{¶8} Martin raises four assignments of error for our review. We will address Martin’s first and third assignments of error together, followed by his second assignment of error and then his fourth assignment of error.

#### **Assignment of Error No. I**

**The Trial Court erred in defining the offense to which Defendant/Appellant pleaded to [sic] as a “sexually-oriented offense that is not registration-exempt.”**

#### **Assignment of Error No. III**

**The Trial Court abused its discretion in classifying Defendant/Appellant as a Sexually Oriented Offender, and ordering Defendant/Appellant to register in accordance with O.R.C. §2950.04 as a Sexually Oriented Offender.**

{¶9} In his first assignment of error, Martin argues that the trial court erred in considering whether the offense to which Martin was convicted is a registration-exempt sexually oriented offense. In his third assignment of error, Martin argues that the trial court erred in classifying him as a sexually oriented offender and ordering him to register as a sexually oriented offender in accordance with R.C. 2950.04. Martin specifically argues under these assignments of error that, while the trial court had jurisdiction to hear his case, it should have applied the juvenile law in effect at the time he committed the offense in sentencing him. Therefore, he argues, the trial court did not need to consider whether the offense to which he pleaded guilty and of which he was convicted was a registration-exempt sexually oriented offense because he could not be required to register under R.C. 2950.04 since he was a juvenile and was not previously adjudicated delinquent for committing a sexually oriented offense.

{¶10} Martin is asking us to ascertain whether the trial court applied the correct law to the facts of his case. We review questions of law de novo. *See State v. Romeo*, 8th Dist. Portage No. 2007-P-0066, 2008-Ohio-1499, ¶ 9, citing *Trans Rail Am., Inc. v. Hubbard Twp.*, 172 Ohio App.3d 499, 2007-Ohio-3478, ¶ 25 (11th Dist.), citing *Long Beach Assn. v. Jones*, 82 Ohio St.3d 574, 576 (1998) and *Ohio Bell Tel. Co. v. Pub. Util. Comm.*, 64 Ohio St.3d 145, 147 (1992). “Under a de novo standard of review, the appellate court reviews the judgment

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“independently and without deference to the trial court’s determination.”” *Id.*, quoting *Trans Rail Am., Inc.* at ¶ 25, quoting *Kovacik v. Eastlake*, 11th Dist. Lake No. 2005-L-025, 2006-Ohio-7016, ¶ 56.

{¶11} As an initial matter, we note that the parties do not dispute that the statutory scheme for the classification and registration of sex offenders in effect at the time Martin committed the offense, and thus applicable to him, was Ohio’s version of Megan’s Law. Likewise, we apply statutes as they existed at the time of the offense. *See, e.g., State v. Sheriff*, 3d Dist. Logan No. 8-11-14, 2012-Ohio-656, ¶ 15, citing *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374.

{¶12} Martin’s arguments are baseless. The Revised Code removes anyone over 21 years of age from juvenile-court jurisdiction, regardless of the date on which the person allegedly committed the offense. *State v. Adams*, 10th Dist. Franklin No. 12AP-83, 2012-Ohio-5088, ¶ 14, citing *State v. Walls*, 96 Ohio St.3d 437, 2002-Ohio-5059, ¶ 14. Because Martin was not apprehended until after he reached 21 years of age, R.C. 2152.02(C)(3), which was in effect at the time Martin committed the underlying offense, requires that he cannot be considered a “child” in relation to the offense in this case. *See State v. Warren*, 118 Ohio St.3d 200, 2008-Ohio-2011, ¶ 29. Likewise, the version of R.C. 2151.23(I), which describes the jurisdiction of the juvenile court, in effect at the time Martin committed the underlying offense, stated:

If a person under eighteen years of age allegedly commits an act that would be a felony if committed by an adult and if the person is not taken into custody or apprehended for that act until after the person attains twenty-one years of age, the juvenile court does not have jurisdiction to hear *or determine any portion of the case* charging the person with committing that act. In those circumstances, divisions (A) and (B) of section 2152.12 of the Revised Code do not apply regarding the act, and the case charging the person with committing the act shall be a criminal prosecution commenced and heard in the appropriate court having jurisdiction of the offense as if the person had been eighteen years of age or older when the person committed the act. *All proceedings pertaining to the act shall be within the jurisdiction of the court having jurisdiction of the offense, and that court has all the authority and duties in the case that it has in other criminal cases in that court.*

(Emphasis added.) R.C. 2151.23(I) (2004) (current version at R.C. 2151.23(I) (2014)). The version of R.C. 2152.12(J), which describes the transfer of cases from the juvenile court, in effect at the time Martin committed the underlying

offense, contains similar language to R.C. 2151.23(I). *See* R.C. 2152.12(J) (2002) (current version at R.C. 2152.12(J) (2012)).<sup>1</sup>

{¶13} While Martin committed the offense when he was 14 or 15, he was not apprehended until he was 22.<sup>2</sup> Therefore, the trial court had jurisdiction to dispose of *all proceedings* pertaining to Martin’s offense.

{¶14} Under Ohio’s version of Megan’s Law, “anyone convicted of a sexually oriented offense [was to] be classified as a sexually oriented offender and be subject to annual reporting requirements for a period of ten years.” *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, ¶ 29.

{¶15} Ohio’s version of Megan’s Law, entitled Martin to a hearing for the trial court to “determine whether he should be classified as a sexual predator, a habitual sex offender or a habitual child-victim offender, or a sexually oriented offender.” *Id.* at ¶ 17. *See also* R.C. 2950.09(B)(1)(a)(i) (2003), repealed by Sex Offenses – Sex Offender Registration and Notification Law – Adam Walsh Child

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<sup>1</sup> “If a person under eighteen years of age allegedly commits an act that would be a felony if committed by an adult and if the person is not taken into custody or apprehended for that act until after the person attains twenty-one years of age, the juvenile court does not have jurisdiction to hear or determine any portion of the case charging the person with committing that act. In those circumstances, divisions (A) and (B) of section 2152.12 of the Revised Code do not apply regarding the act, and the case charging the person with committing the act shall be a criminal prosecution commenced and heard in the appropriate court having jurisdiction of the offense as if the person had been eighteen years of age or older when the person committed the act. *All proceedings pertaining to the act shall be within the jurisdiction of the court having jurisdiction of the offense, and that court has all the authority and duties in the case that it has in other criminal cases in that court.*” (Emphasis added.) R.C. 2152.12(J) (2002).

<sup>2</sup> We note that Martin argues in his reply brief that the “entire case must be dismissed” because Martin “may have been ‘11 or 12 years old’ at the time of the alleged offense.” (Appellant’s Reply Brief at 1). Martin’s argument is erroneous because he pled guilty to Count Two of the indictment as it was alleged in the indictment—that is, the indictment alleged that the offense occurred “on or about 2005 – 2006,” when Martin was 14 or 15 years old. (Doc. No. 1). (*See also* PSI at 1).

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Protection and Safety Act – Penalties – Requirements, Am.Sub.S.B. No. 10, 2007 Ohio Laws, File 10. R.C. 2950.09(B)(1)(a) (2003), which describes the sexual-offender-classification hearing, provided, in relevant part:

The judge who is to impose sentence on a person who is convicted of or pleads guilty to a sexually oriented offense that is not a registration-exempt sexually oriented offense shall conduct a hearing to determine whether the offender is a sexual predator if any of the following circumstances apply:

(i) Regardless of when the sexually oriented offense was committed, the offender is to be sentenced on or after January 1, 1997, *for a sexually oriented offense that is not a registration-exempt sexually oriented offense and that is not a sexually violent offense.*

(Emphasis added.) Martin pleaded guilty to and was convicted of a sexually oriented offense that is not a registration-exempt sexually oriented offense and not a sexually violent offense.

{¶16} R.C. 2950.01(D)(2)(a) (2004) defined sexually-oriented offense at the time as:

“Sexually oriented offense” means any of the following:

(2) An act committed by a person under eighteen years of age that is any of the following:

(a) Subject to division (D)(2)(i) of this section, regardless of the age of the victim of the violation, a violation of section 2907.02, 2907.03, 2907.05, or 2907.07 of the Revised Code.

(Emphasis added.) R.C. 2950.01(D)(2)(a) (2004) (current version at R.C. 2950.01(A)(1) (2014)). Martin committed a sexually oriented offense because he pleaded guilty to and was convicted of a violation of R.C. 2907.05 and because he committed the act when he was under 18.

{¶17} The offense to which Martin pleaded guilty and was convicted is not a registration-exempt sexually oriented offense. R.C. 2950.01(Q)(1) (2004) defined registration-exempt sexually oriented offense as: “‘Registration-exempt sexually oriented offense’ means *any presumptive registration-exempt sexually oriented offense \* \* \**.” (Emphasis added.) R.C. 2950.01(Q)(1) (2004), repealed by Sex Offenses – Sex Offender Registration and Notification Law – Adam Walsh Child Protection and Safety Act – Penalties – Requirements, Am.Sub.S.B. No. 10, 2007 Ohio Laws, File 10. R.C. 2950.01(P)(1) (2004) defined presumptive registration-exempt sexually oriented offense as:

“Presumptive registration-exempt sexually oriented offense” means any of the following sexually oriented offenses described in division

(P)(1)(a), (b), (c), (d), or (e) of this section, when the offense is committed by a person who previously has not been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing any sexually oriented offense described in division (P)(1)(a), (b), (c), (d), or (e) of this section, any other sexually oriented offense, or any child-victim oriented offense *and when the victim or intended victim of the offense is eighteen years of age or older.*

(Emphasis added.) R.C. 2950.01(P)(1) (2004), repealed by Sex Offenses – Sex Offender Registration and Notification Law – Adam Walsh Child Protection and Safety Act – Penalties – Requirements, Am.Sub.S.B. No. 10, 2007 Ohio Laws, File 10.

{¶18} Martin’s offense cannot be considered a presumptive registration-exempt sexually oriented offense because his victim was under the age of 18. Therefore, Martin was not convicted of a registration-exempt sexually oriented offense. Accordingly, the trial court was required to hold a registration hearing to determine his offender status. Because the trial court had jurisdiction to dispose of all proceedings pertaining to Martin’s offense, his argument that it was unnecessary for the trial court to consider whether he committed a registration-exempt sexually oriented offense is erroneous. Instead, the trial court properly considered whether he committed a registration-exempt sexually oriented

offense. Moreover, the trial court did not err in classifying him as a sexually oriented offender and ordering him to register as a sexually oriented offender in accordance with R.C. 2950.04.

{¶19} Accordingly, Martin’s first and third assignments of error are overruled.

### **Assignment of Error No. II**

**The Trial Court erred in stating that Defendant/Appellant “previously was adjudicated a delinquent child...pursuant to Chapter 2152. [sic] of the Revised Code, or the offender has a history of criminal convictions.”**

{¶20} In his second assignment of error, Martin argues that the trial court erred in finding that Martin was previously adjudicated a delinquent child.

{¶21} Again, because Martin is asking us to ascertain whether the trial court applied the correct law to the facts of his case, we will review his argument under this assignment of error de novo. *Romeo*, 2008-Ohio-1499, at ¶ 9.

{¶22} Martin erroneously cites R.C. 2152.82(A) as establishing the definition of a “delinquent child.” Rather, “delinquent child” is defined in R.C. 2152.02(F). R.C. 2152.02(F) defines “delinquent child” as:

“Delinquent child” includes any of the following:

- (1) Any child, except a juvenile traffic offender, who violates any law of this state or the United States, or any ordinance of a political

subdivision of the state, that would be an offense if committed by an adult.

R.C. 2152.02(F)(1).

{¶23} Martin was adjudicated a delinquent child on September 10, 2002 for inducing panic, a fourth-degree felony. (PSI at 3). Accordingly, Martin's second assignment of error is without merit and overruled.

#### **Assignment of Error No. IV**

#### **The Trial Court erred in ordering Community Control Sanctions on Defendant/Appellant.**

{¶24} In his fourth assignment of error, Martin argues that the trial court erred in imposing community-control sanctions against him because its finding that he was previously adjudicated a delinquent child was improper. Because we determined in addressing Martin's second assignment of error that he was previously adjudicated a delinquent child, his argument under this assignment of error is baseless and overruled.

{¶25} Having found no error prejudicial to the appellant herein in the particulars assigned and argued, we affirm the judgment of the trial court.

*Judgment Affirmed*

**ROGERS, P.J. and WILLAMOWSKI, J., concur.**