

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	John W. Wise, P.J.
Plaintiff-Appellant	:	Julie A. Edwards, J.
	:	John F. Boggins, J.
-vs-	:	
	:	Case No. 2004-CA-36
ALVIN TURNER, JR.	:	
	:	
	:	
Defendant-Appellee	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal Appeal From Richland County
Court of Common Pleas Case No. 00-CR-
410-H

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: 12/2/2004

APPEARANCES:

For Plaintiff-Appellant

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For Defendant-Appellee

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Edwards, J.

{¶ 1} Plaintiff-appellant, the State of Ohio [hereinafter appellant], appeals from the March 24, 2004, Judgment Entry which rescinded a previous trial court order which designated defendant-appellee Alvin Turner, Jr. [hereinafter appellee] as a sex offender.

STATEMENT OF THE FACTS AND CASE

{¶ 2} On October 18, 2000, appellee pled guilty to two counts of attempted pandering of sexually oriented matter involving a minor, in violation of R.C. 2907.322(A)(1). Appellee was sentenced to two years in prison and found to be a sexually oriented offender. Accordingly, pursuant to R.C. 2950.07(B)(3), appellee was ordered to register annually as a sexually oriented offender for ten years.

{¶ 3} On February 5, 2004, appellee filed a pro se “motion for dismissal of sex offender [sic] labeling.” By Judgment Entry filed March 24, 2004, the trial court granted appellee’s motion. In the Entry, the trial court specifically rescinded appellee’s designation as a sexually oriented offender and declared that appellee must no longer register as a sexually oriented offender.

{¶ 4} It is from that Judgment Entry that the appellant appeals, raising the following assignment of error:

{¶ 5} “WHETHER, THE HONORABLE JAMES HENSON, JUDGE OF THE COMMON PLEAS COURT OF RICHLAND COUNTY, OHIO, HAD AUTHORITY TO ISSUE ITS MARCH 24, 2004 JUDGMENT ENTRY, RESCINDING DEFENDANT’S SEX OFFENDER DESIGNATION.”

{¶ 6} In the sole assignment of error, appellant contends that the trial court had no authority to rescind appellee’s sexual offender designation. We agree.

{¶ 7} Appellee pled guilty to two counts of attempted pandering of sexually oriented matter involving a minor, in violation R.C. 2907.322(A)(1). At that time, appellant was determined to be a sexually oriented offender pursuant to R.C. 2950.01(D).

{¶ 8} Subsections (D)(1)(b)(iii) and (D)(1)(g) of R.C. 2950.01 state that anyone who is convicted of an attempt to commit pandering of sexually oriented matter involving a minor is a sexually oriented offender. Accordingly, appellant had a duty to comply with the registration requirements imposed on sexual offenders for ten years pursuant to R.C. 2950.07(B)(3).

{¶ 9} The Revised Code no longer provides a mechanism to rescind a sexual offender designation imposed upon an adult nor to relieve such an offender from his duty to comply with the registration requirements that result from that designation.¹ Thus, the trial court had no authority to rescind the sexual offender designation or relieve appellee of the resulting duty to register as a sex offender pursuant to the Revised Code.

¹ Currently, while R.C. 2950.07(B) contains provisions to remove the determination that a delinquent child is a sexual predator, habitual sex offender or sexually oriented offender, it provides no such provision for adults. For example, in regards to juvenile sexually oriented offenders, R.C. 2950.07(B)(3) states as follows: "If a delinquent child is classified pursuant to section 2152.82 or 2152.83 of the Revised Code a juvenile offender registrant and if the judge who made the disposition for the delinquent child or that judge's successor in office subsequently enters a determination pursuant to section 2152.84 or 2152.85 of the Revised Code that the delinquent child no longer is to be classified a juvenile offender registrant, the delinquent child's duty to comply with those sections terminates upon the court's entry of the determination." Previously, R.C. 2950.09(D) provided a mechanism for an adult offender to petition a court to make a determination that the offender is no longer a sexual offender. However, that provision was removed when the statute was amended by S.B. 5, eff. 7-31-03. See *State v. Shelton*, Cuyahoga App. No. 83289, 2004 WL 2306606. Appellant did not petition the court to change his status as a sexual offender until February 5, 2004, after the statute was amended.

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Richland County Court of Common Pleas is reversed and the matter is remanded for further proceedings. Costs assessed to appellee.

JUDGES