

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Julie A. Edwards, P. J.
	:	Hon. William B. Hoffman, J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	
-VS-	:	
	:	Case No. 10 CA 13
LARRY E. McARTOR	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Criminal Appeal from the Court of Common Pleas, Case No. 02-CR-289 & 02-CR-300

JUDGMENT: Vacated, Reversed and Remanded

DATE OF JUDGMENT ENTRY: November 23, 2010

APPEARANCES:

For Plaintiff-Appellee

KENNETH W. OSWALT
PROSECUTING ATTORNEY
TRACY F. VAN WINKLE
ASSISTANT PROSECUTOR
20 South Second Street, Fourth Floor
Newark, Ohio 43055

For Defendant-Appellant

TERRI B. JAMISO-GARY
580 South High Street
Suite 200
Columbus, Ohio 43215-5644

Wise, J.

{¶1} Defendant-Appellant Larry E. McArtor appeals his sexual offender classification under the Tier system.

{¶2} Plaintiff-Appellee is the State of Ohio.

STATEMENT OF THE CASE AND FACTS

{¶3} On November 21, 2002, a jury found Appellant Larry E. McArtor guilty on three counts of gross sexual imposition in violation of R.C. 2907.05 and one count of rape in violation of R.C. 2907.02. The jury also found Appellant had purposely compelled the victim to submit by force or threat of force.

{¶4} Appellant was sentenced to one year in prison on each of the gross sexual imposition counts, to be served consecutively, and to life in prison on the rape charge, to which the gross sexual imposition charges were to run concurrent. Appellant was also adjudicated a Sexually Oriented Offender.

{¶5} On December 16, 2009, the State filed a motion to resentence because the original sentencing entry failed to include a mandatory imposition of post-release control.

{¶6} At the re-sentencing hearing held on January 5, 2010, the trial court again imposed a sentence of one year on each of the gross sexual imposition counts, to be served consecutively, and to life in prison on the rape charge, to which the gross sexual imposition charges were to run concurrent. At that time Appellant was also advised that upon his release he would be re-classified as a Tier One offender.

{¶7} It is from this re-sentencing that Appellant now appeals, raising the following sole assignment of error:

ASSIGNMENT OF ERROR

{¶8} “I. APPELLANT’S SEXUAL OFFENDER CLASSIFICATION UNDER THE TIER SYSTEM WAS UNCONSTITUTIONAL AS DETERMINED IN STATE V. BODYKE, 2010-OHIO-2424 (SUPREME COURT OF OHIO).”

I.

{¶9} In Appellant’s first assignments of error, Appellant argues that the trial court erred in reclassifying him as a Tier I offender. We agree.

{¶10} The Ohio Supreme Court recently held in *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, that R.C. §2950.031 and §2950.032, which require the attorney general to reclassify sex offenders whose classifications have already been adjudicated by a court and made the subject of a final order, violate the separation-of-powers doctrine by requiring the opening of final judgments. The Court reaffirmed the principle that the authority to review, affirm, modify, or reverse trial courts’ judgments is strictly limited to appellate courts under the Ohio Constitution. Therefore, R.C. §2950.031 and R.C. §2950.032 “may not be applied to offenders previously adjudicated by judges under Megan’s Law, and the classifications and community-notification and registration orders imposed previously by judges are reinstated.” *Bodyke* at ¶ 66. The Court severed those provisions from R.C. Chapter 2950. *Id.*

{¶11} The State of Ohio conceded that Appellant herein was reclassified based on sections of the law that the Supreme Court declared unconstitutional in *Bodyke*.

{¶12} Based on the foregoing, we find Appellant’s sole assignment of error well-taken and hereby sustain same.

{¶13} Appellant's reclassification by the Court of Common Pleas, Licking County, Ohio, is vacated and this matter is reversed and remanded for further proceedings consistent with this opinion.

By: Wise, J.,
Edwards, P.J., and
Hoffman, J., concur

JUDGES

JWW/d 1028

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellant

-VS-

LARRY E. McARTOR

Defendant-Appellee

JUDGMENT ENTRY

CASE NO. 10 CA 013

For the reasons stated in our accompanying Memorandum-Opinion, the judgment entry of reclassification entered in the Court of Common Pleas, Licking County, Ohio, is vacated and this matter is reversed and remanded for further proceedings consistent with this opinion.

Costs assessed to Appellee.

JUDGE

[Cite as *State v. McArtor*, 2010-Ohio-5803.]