[Cite as *Hartley v. State*, 2011-Ohio-96.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

RICHARD L. HARTLEY

Petitioner-Appellee

-vs-

STATE OF OHIO

Respondent-Appellant

JUDGES:
Hon. William B. Hoffman, P. J.
Hon. Sheila G. Farmer, J.
Hon. John W. Wise, J.

Case No. 10 CA 65

O P I N I O N

CHARACTER OF PROCEEDING: Civil Appeal from the Court of Common Pleas, Case No. 2008 CV 00273

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: January 12, 2011

APPEARANCES:

For Petitioner-Appellee

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For Respondent-Appellant

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ASSISTANT PROSECUTOR
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Lancaster, Ohio 43130

Wise, J.

{¶1} Respondent-Appellant, the State of Ohio, appeals the decision of the Court of Common Pleas, Licking County, granting a petition filed by Petitioner-Appellee Richard L. Hartley contesting his Ohio Attorney General reclassification as a Tier III sex offender under R.C. 2950.01, et seq., as amended by S.B. 10, also known as the "Adam Walsh Act" ("AWA"). The relevant facts leading to this appeal are as follows.

{¶2} In 1996, appellee was convicted of sexual assault in the State of Colorado.[1] He thereafter moved to Ohio. There is no documentation in the record that appellee was ever classified, via a hearing in Colorado, Ohio, or elsewhere, as a sexual offender under any category.

{¶3} In December 2007, the Ohio Attorney General sent appellee a notice of new classification as a Tier III offender under the AWA.

{¶4} On January 30, 2008, appellee filed a petition in the Licking County Court of Common Pleas to contest his reclassification.

{¶5} On June 18, 2010, shortly after the Ohio Supreme Court's *Bodyke* decision (see infra), the trial court granted appellee's petition.

{¶6} Appellant State of Ohio filed a notice of appeal on June 29, 2010. It herein raises the following sole Assignment of Error:

{¶7} "I. THE TRIAL COURT ERRED IN FINDING THAT A SEX OFFENDER'S CLASSIFICATION WAS VOID BASED ON THE SEPARATION OF POWER (SIC) DOCTRINE OF THE OHIO CONSTITUTION, WHERE THE UNDERLYING SEX OFFENSE CONVICTION OCCURRED OUT-OF-STATE."

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[1] Appellee conceded the existence of the conviction in his petition contesting reclassification.

I.

{¶8} In *State v. Bodyke,* 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, the Ohio Supreme Court severed R.C. 2950.031 and 2950.032, the reclassification provisions of the Adam Walsh Act, and held that after severance, those provisions could not be enforced. The Court further held that R.C. 2950.031 and 2950.032 may not be applied to offenders previously adjudicated by judges under "Megan's Law." See also *Chojnacki v. Cordray*, 126 Ohio St.3d 321, 933 N.E.2d 800, 2010-Ohio-3212, ¶5.

{¶9} The State's arguments in the case sub judice in support of reversing the trial court's disallowance of reclassification are essentially as follows. First, the State contends that there is no separation of powers conflict under *Bodyke* where the judicial branch has taken no action as to sexual offender classification, or, if any action had been taken, it would have been via another state's judiciary. Next, the State maintains that a person convicted of a sex offense in another state is not substantially similar to a person judicially categorized by an Ohio judge for purposes of a separation of powers analysis. Finally, the State urges that a Tier III classification occurs as a matter of law pursuant to R.C. 2950.01(G), and that deficiencies in the administrative procedures for reclassification would have no effect on such reclassification.

{¶10} However, in *State v. Clager*, Licking App.No.10-CA-49, 2010-Ohio-6074, this Court found that even out-of-state offenders are not subject to an Ohio Attorney General reclassification based on the doctrine of separation of powers. More recently, in *Parrish v. State*, Licking App.No. 10-CA-64, 2010-Ohio - - - -, this Court applied *Bodyke* and *Clager* to hold that a petitioner's challenge to reclassification was properly granted,

even though there was no indication that the out-of-state court had ever classified the petitioner as a sexual offender.

{¶11} Upon review, the State's present arguments do not persuade us to deviate from our rationale in *Clager* and *Parrish*.

{¶12} The State's sole Assignment of Error is therefore overruled.

{¶13} For the foregoing reasons, the judgment of the Court of Common Pleas, Licking County, Ohio, is affirmed.

By: Wise, J.

Hoffman, P. J., and

Farmer, J., concur.

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JUDGES

JWW/d 1229

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

RICHARD L. HARTLEY	:	
Petitioner-Appellee	:	
-vs-	:	JUDGMENT ENTRY
STATE OF OHIO	:	
Respondent-Appellant	:	Case No. 10 CA 65

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas, Licking County, Ohio, is affirmed.

Costs assessed to Respondent-Appellant.

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JUDGES