

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

CHRISTOPHER FIX

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 13CA88

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Richland County Court of
Common Pleas Court, Case No.
2013 CR 0334 D

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

August 18, 2014

APPEARANCES:

For Defendant-Appellant

For Plaintiff-Appellee

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Hoffman, P.J.

{¶1} Defendant-appellant Christopher Fix appeals his conviction entered by the Richland County Court of Common Pleas for failure to register as a sexual predator, in violation of R.C. 2950.04. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE CASE¹

{¶2} On November 14, 1997, Appellant was convicted and sentenced on one count of rape in the Richland County Court of Common Pleas. On November 14, 1997, the trial court filed an addendum to Appellant's sentencing entry designating Appellant a sexual predator, under the then existing sexual offender classification system. Under that classification system, a sexual predator was required to register with the sheriff's office every 90 days for life.

{¶3} Upon his release from prison, Appellant was given an Explanation of Duties to Register as a Sex Offender sheet which mistakenly listed Appellant as a Sexually Oriented Offender. The classification system existing at the time Appellant was originally sentenced only required him to register annually for ten years. Despite the mistake on the form, Appellant continued to register every 90 days with the Richland County Sheriff's Office after his release from prison.

{¶4} On September 22, 2010, the trial court notified Appellant he was subject to a lifetime registration requirement, and on October 5, 2010 Appellant was notified he would have to register his change of address. Appellant signed each notification form.

{¶5} In 2010, Appellant moved to Nevada. Appellant failed to register in the state of Nevada, and was convicted of the same. Appellant returned to Ohio in 2013,

¹ A rendition of the underlying facts is unnecessary for our resolution of the appeal.

and failed to register with the Sheriff's office. The state of Nevada informed Ohio authorities Appellant had returned to Richland County without registering. On June 7, 2013, Appellant was indicted on one count of failure to register as a sexual predator in violation of R.C. 2950.04. On August 26, 2013, Appellant entered a plea of no contest to the charge, and was sentenced to three years in prison.

{¶6} Appellant assigns as error,

{¶7} "I. THE INDICTMENT WAS DEFECTIVE IN VIOLATION OF ARTICLE I OF THE CONSTITUTION OF THE STATE OF OHIO AND THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION."

{¶8} "II. THE TRIAL COURT ERRED BY NOT FINDING THE FACTS INSUFFICIENT AS A MATTER OF LAW TO ESTABLISH GUILT BECAUSE OF THE ORIGINAL NOTIFICATION OF A TEN YEAR OBLIGATION TO REGISTER."

I.

{¶9} Appellant asserts the indictment charging him with failure to register alleges Appellant is required to register "pursuant to divisions (A) and (B) of this section", but does not state what section it refers to; therefore, is fatally flawed. We disagree.

{¶10} Appellant did not raise the error before the trial court; therefore, has waived all but plain error. *State v. Biros* (1997), 78 Ohio St.3d 426. The error must be clear or obvious. It must have affected the defendant's substantial rights. *Puckett v. United States* (2009), 129 S.Ct. 1423.

{¶11} Upon review of the indictment herein, the language quotes the criminal statute for failing to register, R.C. 2950.04(E). Quoting the statute is an accepted

method for indictment. Criminal Rule 7(B). The plain meaning of the indictment language states Appellant was required to register as a sexual offender and failed to do so. Accordingly, we do not find the indictment defective herein. Appellant's due process rights were not violated.

{¶12} Appellant's first assignment of error is overruled.

II.

{¶13} In the second assignment of error, Appellant argues he was not provided sufficient notice of his duty to register as a sexual predator. We disagree.

{¶14} The duty to register arises upon operation of law, not upon notice. *State v. Smith*, 8th Dist. No. 96582, 2012-Ohio-261, citing *State v. Hayden*, 96 Ohio St.3d 211, 2002-Ohio-4169. Further, Appellant registered every 90 days for ten years before moving to the state of Nevada. Appellant was convicted of failing to register in the state of Nevada. Upon return to the state of Ohio, Appellant failed to register.

{¶15} Appellant's duty to register attached upon his designation as a sexual predator, and was not superceded by his improper notice on his release from prison. Furthermore, Appellant had actual notice of his duty to register every 90 days for life.

{¶16} Appellant's second assignment of error is overruled.

{¶17} Appellant's conviction in the Richland County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Wise, J. concur