[Cite as *State v. Reed*, 2015-Ohio-2498.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff - Appellant	:	Hon. Sheila G. Farmer, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
ROBERT E. REED	:	Case No. CT2015-0006
	:	
Defendant - Appellee	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Muskingum County Court of Common Pleas, Case No. CR2014-0349
JUDGMENT:	Reversed and Remanded
DATE OF JUDGMENT:	June 22, 2015

APPEARANCES:

For Plaintiff-Appellant

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Baldwin, J.

{¶1} Plaintiff-appellant State of Ohio appeals from the February 12, 2015 Entry of the Muskingum County Court of Common Pleas dismissing the indictment against defendant-appellee Robert Reed.

STATEMENT OF THE FACTS AND CASE

{¶2} In 2011, appellee was convicted of voyeurism and classified as a Tier 1 sex offender.

{¶3} On November 5, 2014, the Muskingum County Grand Jury indicted appellee on one count of failure to register (internet identifier) in violation of R.C. 2950.05(D), a felony of the fifth degree, and one count of tampering with records in violation of R.C. 2913.42(A), a felony of the third degree. At his arraignment on November 12, 2014, appellee entered a plea of not guilty to the charges.

{¶4} Appellee, on November 12, 2014, also filed a Motion to Dismiss the indictment for lack of jurisdiction. Appellee, in his motion, argued that because no penalty existed under R.C. 2950.99 for failure to notify of change of e-mail address or internet identifiers, "failure to provide notice of such a change cannot, under Ohio Revised Code Section 2901.03, constitute a criminal offense." Appellant filed a response to such motion on November 14, 2014. Pursuant to an Entry filed on January 9, 2015, the trial court denied appellee's motion.

{¶5} Thereafter, on February 6, 2015, appellee filed a "Motion to Reconsider Motion to Dismiss Indictment" based on the trial court's decision in a recent case. As memorized in an Entry filed on February 12, 2015, the trial court dismissed the indictment.

{¶6} Appellant now raises the following assignments of error on appeal:

{¶7} A *DE NOVO* REVIEW OF THE MOTION TO DISMISS IS REQUIRED BECAUSE THE TRIAL COURT ERRED BY MISINTERPRETING R.C. [SECTION] 2950.99 TO LIMIT WHICH PRESCRIBED PROHIBITIONS DETAILED IN THE SEX OFFENDER STATUTE MAY BE PENALIZED, THEREFORE FINDING THAT ANY VIOLATION OF THE OTHER PRESCRIBED PROHIBITIONS DOES NOT CONSTITUTE A CRIME.

{¶8} THE TRIAL COURT ERRED BY RULING THAT A FAILURE TO COMPLETE A GOVERNMENTAL SEX OFFENDER REGISTRATION FORM IS NOT TAMPERING WITH RECORDS BECAUSE THERE WAS NO LEGAL BENEFIT TO OMIT INTERNET IDENTIFIERS AND THEREFORE IT CANNOT BE FRAUDULENT.

I

{¶9} Appellant, in its first assignment of error, argues that the trial court erred in dismissing the offense of failure to provide an internet identifier when registering as a sex offender. The trial court, in its February 12, 2015 Entry, stated, in relevant part, that "[b]ecause a lack of penalty exists [in the Ohio Revised Code] for failure to notify a change of internet identifiers, failure to provide notice of such a change cannot, under Ohio Revised Code [Section] 2901.03, constitute a criminal offense."

{¶10} Recently, this Court, in *State v. Arnold*, 5th Dist. Muskingum No. CT2015-0004, 2015-Ohio- 2019, addressed the same issue. In *Arnold*, the appellant was indicted on one count of failing to register in violation of R.C. 2950.05(D) and other charges. He filed a motion seeking to dismiss the indictment, arguing that no penalty existed for failure to notify of a change of email address or internet identifiers and that,

therefore, failure to provide notice of such change under Ohio law could not constitute a criminal offense. After the trial court denied the motion to dismiss, the appellant pleaded no contest to the charge of failure to register and the remaining charges were dismissed.

{¶11} The appellant then appealed, arguing that no penalty existed under the statute for failure to notify of internet identifiers and that, therefore, the trial court erred in failing to dismiss the indictment. This Court, in affirming the decision of the trial court, stated, in relevant part, as follows at paragraph 13: "Here, Appellant did not fulfill his initial duty to register. Where the registration form clearly indicated Appellant was to provide all email identifiers at the time of registration, including email and internet identifiers, e.g. Facebook, Appellant failed to provide the same. Therefore, Appellant failed to register initially; …" We further found that "the statute requires the submission of an accurate and complete registration form" Id at 18.

{¶12} Based on the foregoing, we find that the trial court erred in dismissing the charge of failure to provide an internet identifier when registering. As in *Arnold*, appellee failed to provide accurate and complete information when registering as a sex offender.

{¶13} Appellant's first assignment of error is, therefore, sustained.

II

{¶14} Appellant, in its second assignment of error, argues that the trial court erred in dismissing the charge of tampering with records.

{¶15} In the case sub judice, the charge of tampering with evidence related to appellee's alleged failure to provide notice of his Facebook page when registering as a

sex offender. The trial court, in its February 12, 2015 Entry, stated, in relevant part, as follows, in dismissing the tampering with records charge:

> The Court further finds that, with respect to the Tampering with Evidence offense, it is alleged the Defendant defrauded by not providing notice of his Facebook page. A fraud is a theft offense which indicates a person must receive some benefit from it. A person who must register is legally permitted to have a Facebook page. The Court finds that there's no criminal offense, therefore, there is no tampering with evidence…

{¶16} With respect to tampering with records, R.C. 2913.42 provides that "[n]o person * * * with purpose to defraud * * * shall… (1) Falsify * * * any writing * * * or record;.." R.C. 2913.01 (B) provides that "'Defraud" means to knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another." Appellee was indicted for violating R.C. 2913.42 by falsifying a sex offender registration form by failing to notify the Sheriff's Office that he had a Facebook page.

{¶17} In *State v. Brunning*, 34 Ohio St.3d 438, 2012 -Ohio- 5752, 983 N.E.2d 316, the Ohio Supreme Court held that the defendant could be convicted of tampering with records based on his filing of a sex offender address verification form containing false information with a purpose to defraud regardless of whether he had a duty to file the form. In *Brunning*, the defendant admitted to having falsified a record that would have led the sheriff to believe that his primary address was in Cleveland. The Ohio

Supreme Court, in *Brunning*, noted that the defendant had voluntarily misled the person to whom he submitted the form.

{¶18} In the case sub judice, appellee failed to provide his Facebook account on his sex offender registration form despite knowing that he was required to do so. By failing to do so, appellee benefitted in that he voluntarily misled the Sheriff to believe that he did not have a Facebook account and as noted by appellant, "[t]his gained him online mobility without supervision from the Sheriff's Office." We find that the trial court erred in dismissing the tampering with records charge.

{¶19} Based on the foregoing, appellant's second assignment of error is sustained.

{¶20} Accordingly, the judgment of the Muskingum County Court of Common Pleas is reversed and this matter is remanded for further proceedings.

By: Baldwin, J.

Gwin, P.J. and

Farmer, J. concur.