

[Cite as *State v. Garcia*, 2009-Ohio-5230.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92373

STATE OF OHIO

PLAINTIFF-APPELLANT

vs.

ANTONIO GARCIA

DEFENDANT-APPELLEE

**JUDGMENT:
DISMISSED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-511788

BEFORE: Blackmon, J., Gallagher, P.J., and Kilbane, J.

RELEASED: October 1, 2009

**JOURNALIZED:
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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

PATRICIA ANN BLACKMON, J.:

{¶ 1} The state of Ohio appeals the trial court's failure to advise appellee Antonio Garcia that he was a Tier II sex offender and failed to advise him of his attendant registration duties. The State assigns one error for our review:

“The trial court erred by failing to notify appellee of his classification as a Tier II sex offender and attendant registration duties.”

{¶ 2} Having reviewed the record and pertinent law, we dismiss the appeal as moot.

{¶ 3} On August 11, 2008, Garcia entered a plea to one count of unlawful sexual conduct with a minor. At the plea hearing, the State apprised the trial court that as a result of pleading guilty, Garcia would be classified as a Tier II sex offender.

{¶ 4} On October 7, 2008, the trial court sentenced Garcia to a six-month prison term and credited him with 137 days for time served. The trial court, however, failed to apprise Garcia that he was a Tier II sex offender and that the classification obligated him to comply with registration duties pursuant to R.C. 2950.03. The state of Ohio was not present at the sentencing hearing. The state filed a timely appeal to this court on November 5, 2008. On November

19, 2008, Garcia completed his sentence and is no longer under the trial court's jurisdiction.

{¶ 5} In its sole assigned error, the state argues that pursuant to R.C. 2950.03(A)(2), the trial judge is required to provide notice of the offender's classification and duty to register "at the time of sentencing." Therefore, the State contends, because no such notice was given to Garcia at his sentencing, the trial judge is required to now give him such notice.

{¶ 6} We agree that R.C. 2950.03(A) dictates that the trial court at sentencing must advise the offender of his or her tier status and attendant registration duties. However, in the instant case, the trial court no longer has jurisdiction over Garcia because he completed his six month sentence on November 19, 2008, while the appeal was pending.¹ "It is not the duty or the responsibility of the court to answer moot questions."² Therefore, we overrule appellant's assigned error and dismiss the appeal.³

{¶ 7} Appeal dismissed.⁴

¹*State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250.

²*State v. Boysaw* (1987), 40 Ohio App.3d 173, 174.

³We note this problem could have been prevented had the prosecutor appeared at the sentencing hearing. The prosecutor could have then brought to the court's attention its duty to notify the defendant of his status and registration requirements.

⁴The trial court's failure to advise Garcia of his registration duties does not affect Garcia's status as a Tier II offender because the classification arises by operation of law. *State v. Omiecinski*, Cuyahoga App. No. 90510, 2009-Ohio-1066,

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

PATRICIA ANN BLACKMON, JUDGE

MARY EILEEN KILBANE, J., CONCURS;
SEAN C. GALLAGHER, P.J., CONCURS
IN JUDGMENT ONLY (SEE ATTACHED
OPINION.)

SEAN C. GALLAGHER, P.J., CONCURRING IN JUDGMENT ONLY:

{¶ 8} I concur in judgment only. I write separately to emphasize that under S.B. 10, also known as the Adam Walsh Act, the sex offender classification and the registration requirements attach by operation of law. Although the trial court should have given Garcia notice at his sentencing pursuant to R.C. 2950.03(A)(2), its failure to do so does not affect Garcia's duty to register. See *State v. Freeman*, Cuyahoga App. No. 86740, 2006-Ohio-2583.

¶29; *State v. Hollis*, Cuyahoga App. No. 91467, 2009-Ohio-2368.