

[Cite as *Dudowski v. State*, 2010-Ohio-2887.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93221

CHRISTOPHER DUDKOWSKI

PLAINTIFF-APPELLANT

vs.

STATE OF OHIO

DEFENDANT-APPELLEE

**JUDGMENT:
REVERSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-646596

BEFORE: Dyke, J., Blackmon, P.J., and Celebrezze, J.
RELEASED: June 24, 2010

**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), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten 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. 2.2(A)(1).

ANN DYKE, J.:

{¶ 1} Plaintiff Christopher Dudkowski appeals from the order of the trial court that denied his petition contesting his reclassification as a Tier II sex offender under R.C. 2950.01, et seq., as amended by S.B. 10, also known as the “Adam Walsh Act.” Pursuant to the Supreme Court’s recent opinion in *State v. Bodyke*, Slip Opinion No. 2010-Ohio-2424, we reverse.

{¶ 2} Plaintiff filed this petition on January 8, 2008, pursuant to R.C. 2950.031(E). In relevant part, plaintiff alleged as follows:

{¶ 3} “1. Petitioner was convicted of Unlawful Sexual Conduct with a Minor, in violation of R.C. 2907.04, on May 16, 2006, * * * in Case Number CR-06-477964-A.

{¶ 4} “2. [Following a hearing, Petitioner was] classified as a sexually oriented offender. Petitioner resides in Cuyahoga County and registers as a sexually oriented offender with the sheriff of that county.

{¶ 5} “3. Petitioner received Notice of New Classification and Registration Duties, based on Ohio’s Adam Walsh Act, from the Office of the Ohio Attorney General on or about December 3, 2007. In the Notice of New Classification and Registration Duties, Petitioner has been notified that his new classification is a Tier II Sex Offender. * * *”

{¶ 6} Petitioner asserted that the reclassification is improper and unconstitutional as an ex post facto law and retroactive law. He also alleged that the reclassification violates the separation of powers doctrine, the Double

Jeopardy Clauses of the United States and Ohio Constitutions, breached his contract, i.e., plea agreement with the state, which is res judicata herein.

{¶ 7} The trial court rejected petitioner's arguments, concluding that "the General Assembly intended the Adam Walsh Act to be a civil, non-punitive set of regulations designed exclusively to protect the public from sexually oriented offenders." The trial court then ordered petitioner to "fully comply with the Adam Walsh Act."

{¶ 8} Petitioner now appeals and assigns eight errors for our review.

{¶ 9} In his third assignment of error, Petitioner asserts that application of Senate Bill 10 violates the separation of powers doctrine.

{¶ 10} In 2006, Congress passed the Adam Walsh Child Protection and Safety Act ("Adam Walsh Act"), 42 U.S. Code Section 16901 et seq. Under this act, sex offenders are designated Tier I, Tier II, or Tier III offenders, with concomitant reporting duties, based upon the crime that they committed. Section 16911. The Ohio General Assembly passed amendments to R.C. Chapter 2950 in S.B. 10, effective on July 1, 2007 and January 1, 2008, adopting the tier designation and reporting system of the Adam Walsh Act.

{¶ 11} In *State v. Bodyke*, Huron App. Nos. H-07-040, H-07-041, H-07-042, 2008-Ohio-6387, the Huron County Court of Appeals considered various constitutional challenges to S.B. 10, including the claim that asserted that this enactment abrogates the "separation of powers principle inherent in Ohio's Constitutional framework."

{¶ 12} The Ohio Supreme Court reversed, concluding 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. *State v. Bodyke*, Slip Opinion No. 2010-Ohio-2424. The court reaffirmed the principle that the authority to review, affirm, modify, or reverse courts' judgments is strictly limited to appellate courts under the Ohio Constitution. The court therefore held that R.C. 2950.031 and 2950.032 impermissibly instruct the executive branch (the Ohio Attorney General) to review past decisions of the judicial branch. The court then severed those provisions from R.C. Chapter 2950.

{¶ 13} In accordance with the Ohio Supreme Court's decision in *State v. Bodyke*, supra, the trial court erred in rejecting the separation of powers argument. Further, because the *Bodyke* Court severed the reclassification provisions, R.C. 2950.031 and 2950.032, from R.C. Chapter 2950, we conclude that the Attorney General improperly reclassified petitioner as a Tier II offender under those statutes.

{¶ 14} The third assignment of error is well-taken. With regard to the remaining assignments of error, we decline to address the remaining constitutional claims at this time. *State v. Bodyke*, supra.

{¶ 15} The judgment of the trial court is reversed for further proceedings consistent with this opinion.

It is, therefore, considered that said appellant recover of said appellee his costs herein.

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.

ANN DYKE, JUDGE

PATRICIA ANN BLACKMON, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR