

[Cite as *Pierson v. State*, 2010-Ohio-3060.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION

**Nos. 92173-92175, 92177, 92179, 92182-92185, 92187-92188,
92199-92206, 92240, 92248-92251, 92255-92257, 92277, 92312, 92328**

REGINALD PIERSON, ET AL.

PLAINTIFFS-APPELLANTS

VS.

STATE OF OHIO

DEFENDANT-APPELLEE

JUDGMENT:
VACATED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CV-646014, CV-646052, CV-646796, CV-646858, CV-646924, CV-647240,
CV-647711, CV-647854, CV-647960, CV-648363, CV-648487, CV-648684, CV-648786,
CV-648856, CV-648929, CV-649447, CV-650023, CV-652997, CV-660633, CV-661734,
CV-662865

BEFORE: Cooney, P.J., Gallagher, A.J., and Kilbane, J.

RELEASED: July 1, 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).

COLLEEN CONWAY COONEY, P.J.:

{¶ 1} This consolidated appeal arises from the trial court’s ruling in a group of sex offender reclassification cases. In Appeal Nos. 92173-92175, 92177, 92179, 92182-92185, 92187-92188, 92199, and 92255-92257, plaintiffs-appellants (collectively referred to as “plaintiffs”), appeal their reclassification under S.B. 10, Ohio’s Adam Walsh Act (“AWA”). In Appeal Nos. 92200-92206, 92240, 92248-92251, 92277, 92312, and 92328, defendant-appellee/cross-appellant, the State of Ohio (“State”), appeals the trial court’s order granting relief from community notifications.¹ Pursuant to the Ohio Supreme Court’s recent decision in *State v. Bodyke*, Slip Opinion No. 2010-Ohio-2424, we vacate plaintiffs’ reclassifications and remand the matter to the trial court to reinstate plaintiffs’ previously imposed classifications, community-notification, and registration orders.

{¶ 2} In this appeal, the following plaintiffs were all previously classified under Ohio’s former “Megan’s Law” as follows:

Sexually Oriented Offenders

{¶ 3} Reginald Pierson (Appeal No. 92713), Michael Erwin (Appeal No. 92714), Cecil Peterson (Appeal No. 92715), Malcolm Williams (Appeal No.

¹ These appeals have been consolidated by this court for record, briefing, hearing, and disposition.

92177), Frank Duncan (Appeal No. 92179), Dionte Goss (Appeal No. 92199), Vaughn Malone (Appeal No. 92255), Wilburn Foster (Appeal No. 92256),² Joey Aaron (Appeal No. 92183), Tony Greathouse (Appeal No. 92184), Guillermo Rosario (Appeal No. 92185), Preston Lampkin (Appeal No. 92187), Stanley Roy (Appeal No. 92188), Antwoine McMiller (Appeal No. 92257), David Sharp (Appeal No. 92205), Amauris Zaiter (Appeal No. 92248), Shadid Abdul-Wali (Appeal No. 92249), Robert Walcott (Appeal No. 92250), Blaine Zahand (Appeal No. 92251), and Cyrus Jones (Appeal No. 92312).

Habitual Sexual Offenders

{¶ 4} Russell Melton (Appeal No. 92182).

AWA Reclassification

{¶ 5} Pursuant to the AWA (R.C. 2950.01 et seq.), the Ohio Attorney General has reclassified each plaintiff, effective January 1, 2008. Joey Aaron and Preston Lampkin have been reclassified as Tier I Sex Offenders. Tony Greathouse and Antwoine McMiller have been reclassified as Tier II Sex Offenders. Reginald Pierson, Michael Erwin, Cecil Peterson, Malcolm Williams, Frank Duncan, Stanley Roy, Dionte Goss, Vaughn Malone, Wilburn Foster, Russell Melton, Guillermo Rosario, David Sharp, Amauris Zaiter, Shahid

²We note that Wilburn Foster is also referred to as Wilburn Roster in the trial court record.

Abdul-Wali, Robert Walcott, Blaine Zahand, and Cyrus Jones have been reclassified as Tier III Sex Offenders.

{¶ 6} As a result of their reclassification under the AWA, plaintiffs individually filed petitions contesting their reclassification, arguing that it violated numerous constitutional rights. The trial court disagreed, finding that the AWA did not violate the Ohio Constitution or the United States Constitution.

Plaintiffs' Appeal

{¶ 7} The plaintiffs appeal, raising seven assignment of error for review. The plaintiffs argue that the application of the AWA to offenders whose crimes were committed before the AWA's effective dates violates numerous constitutional rights, including the separation-of-powers doctrine.

{¶ 8} In *Bodyke*, the Ohio Supreme Court recently addressed the constitutionality of the AWA, as it applied to sex offenders whose cases had been fully adjudicated prior to its enactment, and found that R.C. 2950.031 and 2950.032, "[t]he AWA's provisions governing the reclassification of sex offenders already classified by judges under Megan's Law[,] violate the separation-of-powers doctrine for two related reasons: the reclassification scheme vests the executive branch with authority to review judicial decisions, and it interferes with the judicial power by requiring the reopening of final judgments." *Id.* at ¶55; see, also, paragraphs two and three of the syllabus. As a result, the

court declared R.C. 2950.031 and 2950.032 unconstitutional and excised these sections from the statutory scheme. *Id.* at ¶66.

{¶ 9} In the instant case, the attorney general reclassified plaintiffs under R.C. 2950.031 and 2950.032. The plaintiffs filed petitions challenging the application of the AWA. The trial court rejected plaintiffs' petitions, finding that the AWA is constitutional. However, because the Ohio Supreme court has severed and excised the unconstitutional provisions reclassifying sex offenders who were classified by court order under former law, this court must vacate plaintiffs' reclassifications and remand the matter to the trial court to reinstate the previously imposed classifications, community-notification, and registration orders. See *Bodyke* at ¶66.

{¶ 10} Thus, plaintiffs' third assignment of error is sustained.

{¶ 11} In light of the *Bodyke* court's conclusion that the reclassification provision is unconstitutional, we decline to address the remaining constitutional arguments raised by the plaintiffs. *Id.* at ¶62.

State's Cross Appeal

{¶ 12} In its cross appeal, the State raises one assignment of error, in which it argues that the trial court erred in finding that community notification under R.C. 2950.11(F)(2) of the AWA does not apply to Reginald Pierson, Michael Erwin, Cecil Peterson, Malcolm Williams, Frank Duncan, Stanley Roy, Dionte Goss,

Vaughn Malone, Wilburn Foster, David Sharp, Amaurius Zaiter, Shahid Abdul-Wali, Robert Walcott, Blaine Zahand, and Cyrus Jones.

{¶ 13} However, having found that the plaintiffs were improperly reclassified and that the trial court must reinstate the previously imposed classifications, community-notification, and registration orders, we find that the State’s argument is moot.

{¶ 14} Thus, the State’s sole cross-assignment of error is overruled.

{¶ 15} Accordingly, we vacate plaintiffs’ reclassifications and remand the matter to the trial court to reinstate the previously imposed classifications, community-notification, and registration orders.

It is ordered that appellants recover of said appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas 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.

COLLEEN CONWAY COONEY, PRESIDING JUDGE

SEAN C. GALLAGHER, A.J., and
MARY EILEEN KILBANE, J., CONCUR