

[Cite as *State v. Patterson*, 2010-Ohio-3715.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93096

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DAMAN PATTERSON

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-513990

BEFORE: Jones, J., Stewart, P.J., and Sweeney, J.

RELEASED AND JOURNALIZED: August 12, 2010

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LARRY A. JONES, J.:

{¶ 1} Defendant-appellant, Daman Patterson (“Patterson”), appeals his conviction. Finding merit to the appeal, we reverse.

{¶ 2} In 1997, Patterson pled guilty to attempted corruption of a minor and was classified as a sexually oriented offender. At some point, Patterson was reclassified as a Tier II sexual offender pursuant to the Adam Walsh Act.¹

¹ The reclassification date listed in the indictment is November 21, 1997, which is obviously incorrect because the Adam Walsh Act went into effect in 2007. The lower

{¶ 3} In 2008, Patterson was charged with one count of failure to provide notice of change in address, in violation of R.C. 2950.05(E)(1), and one count of failure to verify address, in violation of R.C. 2950.06(F). He decided to plead no contest to the charges, citing his desire to challenge the constitutionality of the Adam Walsh Act. At his plea hearing, the parties and the trial court were under the mistaken impression that the charges were felonies of the third degree, when in fact the charges, as indicted, were felonies of the fourth degree. See R.C. 2950.99(A)(1)(a)(iii). Patterson pled no contest to both charges and the trial court sentenced him to a total of one year in prison.

{¶ 4} Patterson now appeals, raising the following nine assignments of error for our review:

“I. The plea of no contest must be vacated because it was not made knowingly, intelligently, and voluntarily when the defendant was misadvised regarding the potential penalties for his alleged offenses.

“II. The convictions must be vacated because counts one and two each fail to state an offense.

“III. Because the trial court believed it was sentencing the defendant with respect to third-degree felonies when the defendant had in fact been charged with fourth-degree felonies, the sentence must be vacated.

“IV. Mr. Patterson received the ineffective assistance of counsel.

“V. The retroactive application of Senate Bill 10 violates the Ex Post Facto Clause of the United States Constitution.

“VI. The retroactive application of Senate Bill 10 violates the Retroactivity Clause of the Ohio Constitution.

court record does not reflect the actual date of reclassification.

“VII. The retroactive application of Senate Bill 10 violates the separation of powers doctrine.

“VIII. Senate Bill 10 violates the double jeopardy clause of the United States Constitution and Section 10, Article 1 of the Ohio Constitution.

“IX. Senate Bill 10, as applied to appellant, violates the United States and Ohio Constitution’s prohibition against cruel and unusual punishment.”

{¶ 5} Because the seventh assignment of error is dispositive of this case, we will address it first.

{¶ 6} 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 July 1, 2007 and January 1, 2008, adopting the tier designation and reporting system of the Adam Walsh Act.

{¶ 7} Recently, in *State v. Bodyke*, Slip Opin. No. 2010-Ohio-2424, the Ohio Supreme Court concluded 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. The court reaffirmed the principle that the authority to review, affirm, modify, or reverse trial courts’ judgments is strictly limited to appellate courts under the Ohio Constitution. *Id.* Therefore, R.C. 2950.031 and R.C. 2950.032 “may not be

applied to offenders previously adjudicated by judges under Megan's Law, and the classifications and community-notification and registration orders imposed previously by judges are reinstated." *Bodyke* at ¶66. The Court then severed those provisions from R.C. Chapter 2950. *Id.*

{¶ 8} In this case, Patterson was reclassified based upon sections of the law that the Ohio Supreme Court has declared unconstitutional. Thus, Patterson's reclassification was unlawful, and cannot serve as the predicate for the crime for which he was indicted and convicted. See *State v. Smith*, Cuyahoga App. No. 92550, 2010-Ohio-2880. Therefore, we vacate his plea and conviction.

{¶ 9} The seventh assignment of error is sustained.

{¶ 10} With regard to Patterson's other assignments of error, we decline to address the remaining constitutional claims at this time. *Bodyke* at ¶62. Additionally, based on the disposition of the seventh assignment of error, Patterson's remaining assignments of error are moot. App.R. 12(A)(1)(c).

{¶ 11} We further determine that since R.C. 2950.031 and 2950.032 have been excised in the statutory scheme, Patterson's previous classification as a sexually oriented offender is reinstated.

{¶ 12} Accordingly, the judgment of the trial court is reversed and this cause is remanded for further proceedings consistent with this opinion.

It is ordered that appellant recover of 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.

LARRY A. JONES, JUDGE

MELODY J. STEWART, P.J., and
JAMES J. SWEENEY, J., CONCUR