

[Cite as *State v. Jones*, 2010-Ohio-5004.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93822

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

LAMONT JONES

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-518550

BEFORE: McMonagle, J., Rocco, P.J., and Dyke, J.

RELEASED AND JOURNALIZED: October 14, 2010

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CHRISTINE T. McMONAGLE, J.:

{¶ 1} Defendant-appellant, Lamont Jones, appeals his conviction, rendered after a jury trial, of (1) failure to provide notice of change of address with a furthermore specification that he had been previously convicted of failure to register, and (2) failure to verify his address with a furthermore specification that he had previously been convicted of failure to register. We reverse and remand.

{¶ 2} The record before us demonstrates that the predicate offense for the charges in this case was Jones's 1999 conviction for gross sexual imposition. Pursuant to that conviction, Jones was labeled a sexual

predator. This court reversed the sexual predator label,¹ and the state appealed to the Ohio Supreme Court. The Supreme Court affirmed this court with respect to the sexual predator classification;² the case was remanded for resentencing.

{¶ 3} Jones was resentenced by the trial court in April 2002; the trial court did not classify him under any designation as a sexually oriented offender and no reporting requirements were explained to him. Jones then served the remainder of his prison sentence, and after his release from prison, did not register as a sex offender. He was indicted in February 2003, for failure to register.

{¶ 4} In March 2003, the April 2002 judgment entry of sentencing was “amended” by the trial court to state that Jones was a “sexually oriented offender, subject to the reporting requirements of the Revised Code.” Jones pleaded guilty to the February 2003 charge for failure to register. He was placed on probation and ordered to register with the County Sheriff as a sexual offender. Subsequently, the Adam Walsh Act became effective in July 2007, and Jones was reclassified as a Tier III offender and required to report every 90 days.

¹*State v. Jones* (July 6, 2000), Cuyahoga App. No. 76222.

²*State v. Jones*, 93 Ohio St.3d 391, 397, 2001-Ohio-1341, 754 N.E.2d 1252.

{¶ 5} The Ohio Supreme Court recently held in *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, 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. 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 severed those provisions from R.C. Chapter 2950. *Id.*

{¶ 6} Jones was reclassified based on sections of the law that the Supreme Court declared unconstitutional in *Bodyke*. At oral argument, the state argued that the conviction on Count 1 should stand because notice of change of address was required under both Megan's Law and the Adam Walsh Act. The state also filed supplemental authority post oral argument in support of its contention that the conviction on Count 1 should remain, specifically, *State v. Leonard*, Cuyahoga App. No. 93496, 2010-Ohio-3601.

{¶ 7} In *Leonard*, the defendant was convicted of attempted rape in 1986. In 2003, he was released from prison and classified as a sexually oriented offender under Megan’s Law. Under that classification, he was required to register and verify his address with the sheriff’s department of his county of residence annually for a period of ten years. He was also required to notify the sheriff’s department in his county of residence of a change of address 20 days prior to the change.

{¶ 8} In January 2008, the defendant was notified that under the Adam Walsh Act (enacted in 2007), “he had new responsibilities with respect to his address verification.” *Leonard* at ¶12. In 2008, he was indicted for failure to verify his address, failure to notify the sheriff of a change of address, and tampering with records. He was found guilty of failure to notify the sheriff’s office of his change of address, but not guilty of failure to verify his address and tampering with records. This court upheld the conviction for failure to notify the sheriff’s office of his change of address, stating that “[s]ince R.C. 2950.05 requires Leonard to give the sheriff’s office twenty days notice before he changes his address, a reasonable factfinder could conclude the state presented sufficient evidence to prove Leonard’s guilt of the offense.” (Emphasis omitted.) *Id.* at ¶36.

{¶ 9} It is not clear, however, whether the defendant in *Leonard* was indicted under Megan’s Law or the Adam Walsh Act. In this case, Jones was

indicted under the Adam Walsh Act; his sexual predator classification under Megan's Law was vacated by both this court and the Ohio Supreme Court. Accordingly, under *Bodyke*, Jones's reclassification was unlawful and cannot serve as the predicate for the crimes on which he was indicted and convicted. See *State v. Smith*, Cuyahoga App. No. 92550, 2010-Ohio-2880, ¶¶28-30.

Judgment reversed; case remanded.

It is ordered that appellant recover from 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. Case remanded to the trial court for further proceedings consistent with this opinion.

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

CHRISTINE T. McMONAGLE, JUDGE

KENNETH A. ROCCO, P.J., and
ANN DYKE, J., CONCUR