

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 25187

Appellee

v.

CLIFFORD GODFREY

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 09 09 2700

Appellant

DECISION AND JOURNAL ENTRY

Dated: December 29, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Clifford Godfrey was originally designated a sexually oriented offender under Megan’s Law, but was later reclassified as a Tier II sex offender under the Adam Walsh Act. In 2009, he was charged with violations of Sections 2950.04 and 2950.05 of the Ohio Revised Code for failure to register and failure to register a change of address. Mr. Godfrey has appealed his convictions, arguing that: (1) the trial court incorrectly failed to dismiss the indictment because the retroactive application of the Adam Walsh Act violated the prohibition against ex post facto laws in the United States Constitution and the prohibition against retroactive laws in the Ohio Constitution; (2) the trial court incorrectly applied the current version of the Adam Walsh Act because his reclassification violates the separation of powers doctrine and his right against double jeopardy; (3) his convictions are not supported by sufficient evidence; (4) his convictions are against the manifest weight of the evidence, and (5) the trial court abused its discretion in

imposing sentence. This Court reverses and remands this matter because the Ohio Supreme Court has ruled that reclassification under the Adam Walsh Act, as was done in Mr. Godfrey's case, is unconstitutional.

BACKGROUND

{¶2} In August 1999, Mr. Godfrey was convicted of one count of corruption of a minor, a fourth-degree felony, and was sentenced to one year in prison. The trial court designated Mr. Godfrey a sexually oriented offender under Ohio's version of Megan's Law and put him on notice of his duty to register his address with the county sheriff within seven days of his release from the Department of Rehabilitation and Correction. Via the 1999 judgment entry, the trial court also notified him that his annual duty to register his address would continue for ten years after leaving prison.

{¶3} Mr. Godfrey was convicted in 2001, 2003, and 2006 of failing to notify authorities of address changes. He was sentenced to prison for each offense. After he failed to register with the Summit County Sheriff following his release from prison in May 2009, he was charged with failure to register and failure to verify his current address. Due to his prior convictions for failure to notify of a change of address, the current charges were increased to third-degree felonies. He was arrested and released on bond. As a condition of his bond, he was sent to the Terrence Mann Residential Center. After he walked away from that facility and failed to register a new address, the State supplemented his indictment with a third count for failure to notice a change of address under Section 2950.04 of the Ohio Revised Code. This count was also increased to a third-degree felony due to his prior convictions.

{¶4} The State presented evidence that, before being sent to the Terrence Mann Residential Center in September 2009, Mr. Godfrey was notified that he had been reclassified as

a Tier II sex offender, requiring twice yearly address verifications for a period of 25 years. At his bench trial, the court partially granted Mr. Godfrey’s Criminal Rule 29 motion and dismissed count two, regarding a failure to verify his current address. The court found him guilty of counts one and three for failure to register and failure to notify of a change of address and sentenced him to eight years in prison.

RECLASSIFICATION UNDER ADAM WALSH ACT

{¶5} Mr. Godfrey’s third assignment of error is that the trial court incorrectly applied the current version of Chapter 2950, otherwise known as the Adam Walsh Act, because his reclassification as a Tier II sex offender violated the separation of powers doctrine and his right against double jeopardy. After oral argument, Mr. Godfrey submitted supplemental authority from the Ohio Supreme Court.

{¶6} In *State v. Bodyke*, 126 Ohio St. 3d 266, 2010-Ohio-2424, at ¶55, the Supreme Court held that “[t]he [Adam Walsh Act’s] provisions governing the reclassification of sex offenders already classified by judges under Megan’s Law violate the separation-of-power doctrine” This is true because the automatic reclassification by the Attorney General “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.* The Court in *Bodyke* severed the reclassification provisions codified at Section 2950.03.1 and 2950.03.2 from the rest of the Adam Walsh Act and held that they “may not be applied to offenders previously adjudicated by judges under Megan’s Law” *Id.* at ¶66. The Court further reinstated “the classifications and community-notification and registration orders imposed previously by judges.” *Id.*

{¶7} In this case, the attorney general reclassified Mr. Godfrey as a Tier II sex offender under the provisions of Chapter 2950 that the Ohio Supreme Court has declared unconstitutional.

Under *Bodyke*, Mr. Godfrey's classification as a sexually oriented offender has been reinstated, and the requirements imposed upon him by the Adam Walsh Act are a nullity. See *State v. Bodyke*, 126 Ohio St. 3d 266, 2010-Ohio-2424, at ¶66. Thus, Mr. Godfrey's reclassification was unlawful and cannot serve as the predicate for the charges at issue in this appeal. See *State v. Smith*, 8th Dist. No. 92550, 2010-Ohio-2880, at ¶28-30. Mr. Godfrey's third assignment of error is sustained. His remaining assignments of error are moot. App. R. 12(A)(1)(c).

CONCLUSION

{¶8} Mr. Godfrey's third assignment of error is sustained on the authority of *State v. Bodyke*, 126 Ohio St. 3d 266, 2010-Ohio-2424. The judgment of the Summit County Common Pleas Court is reversed, and this matter is remanded for proceedings consistent with this opinion.

Judgment reversed
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellee.

CLAIR E. DICKINSON
FOR THE COURT

WHITMORE, J.
MOORE, J.
CONCUR

APPEARANCES:

TODD M. CONNELL, attorney at law, for appellant.

SHERRI BEVAN WALSH, prosecuting attorney, and RICHARD S. KASAY, assistant prosecuting attorney, for appellee.