

[Cite as *State v. Ogden*, 2011-Ohio-1589.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-640
George R. Ogden,	:	(C.P.C. No. 08MS-04-378)
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on March 31, 2011

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

Yeura R. Venters, Public Defender, and *Paul Skendelas*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶1} Defendant-appellant, George R. Ogden ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas denying his petition to contest his sexual offender reclassification as a Tier III sex offender. For the reasons that follow, we reverse and remand this matter with instructions.

{¶2} On or about November 4, 1988, appellant was convicted of one count of felonious assault and one count of abduction. Following an H.B. 180 hearing held on December 14, 1999, the Montgomery County Court of Common Pleas classified appellant

as a sexual predator under Megan's Law. This classification subjected appellant to a lifetime duty to register upon release from prison and quarterly periodic verification, as well as community notification.

{¶3} In 2006, Congress passed the Adam Walsh Child Protection and Safety Act, which created national standards for sexual offender classification, registration, and community notification. As a result, Ohio reorganized its sexual offender registration scheme in 2007 by enacting its version of the Adam Walsh Act ("AWA"), also known as S.B. No. 10, which became effective on July 1, 2007 and January 1, 2008. S.B. No. 10 repealed the three-level scheme set forth under Megan's Law ("sexually oriented offender," "habitual sexual offender," and "sexual predator"), and replaced it with a new three tier system (Tier I, Tier II, and Tier III).

{¶4} As a result of the enactment of S.B. No. 10, appellant was reclassified by Ohio's attorney general as a Tier III sexual offender. Under this new classification, appellant was required to personally register with the local sheriff every 90 days for life and was also subject to community notification provisions. Appellant, who had been released from prison and was now living in Franklin County, filed a petition to contest reclassification and requested a hearing as to the applicability of the new registration requirements. Appellant also raised a variety of constitutional challenges to Ohio's AWA.

{¶5} On January 15, 2009, the trial court held a hearing on the petition, but took the matter under advisement. On June 3, 2009, the trial court dismissed the petition contesting reclassification, finding appellant's constitutional challenges to be without merit. Appellant filed a timely appeal and now raises one assignment of error for our review:

ASSIGNMENT OF ERROR

The trial court erred in failing to find that S.B. 10 violates the separation of powers doctrine of the Ohio Constitution.

{¶6} In his sole assignment of error, appellant argues his sexual offender reclassification pursuant to S.B. No. 10 violates the separation-of-powers doctrine. Appellant cites to *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, *Chojnacki v. Cordray*, 126 Ohio St.3d 321, 2010-Ohio-3212, and *In re Sexual Offender Reclassification Cases*, 126 Ohio St.3d 322, 2010-Ohio-3753, in support of his position.

{¶7} After the trial court dismissed appellant's petition in the case sub judice, the Supreme Court of Ohio considered the constitutionality of S.B. No. 10 in *Bodyke*. The court concluded "R.C. 2950.031 and 2950.032, the reclassification provisions in the AWA, are unconstitutional because they violate the separation-of-powers doctrine." *Id.* at ¶2.

{¶8} Specifically, the court found that the reclassification scheme, which required the attorney general to reclassify offenders who had previously been classified by Ohio judges under the provisions set forth pursuant to Megan's Law and its predecessors, violated the separation-of-powers doctrine for two reasons. *Bodyke* at ¶54-55. First, the court determined the reclassification scheme improperly granted authority to the executive branch to review judicial decisions. *Id.* at ¶55. Second, the court found the reclassification scheme interfered with judicial power by requiring that final judgments be reopened and revised. *Id.*

{¶9} After concluding that R.C. 2950.031 and 2950.032 were unconstitutional, the Supreme Court of Ohio determined the remedy was to sever those provisions. "R.C. 2950.031 and 2950.032 are severed and * * * after severance, they may not be enforced.

R.C. 2950.031 and 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.

{¶10} Therefore, as a result of the Supreme Court of Ohio's holding in *Bodyke*, both R.C. 2950.031 and 2950.032 are unconstitutional. Consequently, these provisions have been severed and are now unenforceable, thereby making appellant's reclassification as a Tier III offender pursuant to R.C. 2950.031 unconstitutional.

{¶11} Moreover, approximately two months after the issuance of its decision in *Bodyke*, the Supreme Court of Ohio reversed and remanded numerous cases to various trial courts after several courts of appeals had rejected constitutional challenges to the AWA based on separation-of-powers grounds. See *In re Sexual Offender Reclassification Cases*. Notably, the Supreme Court of Ohio did not dismiss these petitions, but rather remanded the cases for further proceedings, if any, as necessitated by *Bodyke*. In several cases, the court specifically remanded to the trial courts with instructions to reinstate the original classification, registration and reporting requirements.

{¶12} Nevertheless, the State of Ohio argues that, in light of the Supreme Court of Ohio's decision in *Chojnacki*, which was issued approximately six weeks after *Bodyke*, R.C. 2950.031 and 2950.032 were facially severed in their entirety, leaving no part of either statute to be enforced. Consequently, the State of Ohio argues the petition contest procedures created under R.C. 2950.031 and 2950.032 have also been severed, thereby leaving the trial court without authority to rule on the reclassification, and thus leaving this court with only authority to vacate the trial court's ruling with respect to the reclassification.

{¶13} However, we have repeatedly rejected this argument and have instead recognized that, as a result of *Bodyke*, reclassifications made under the severed statutes must be vacated and the prior judicial classifications must be reinstated. See *State v. Lawson*, 10th Dist. No. 09AP-672, 2011-Ohio-1255; *State v. Miliner*, 10th Dist. No. 09AP-643, 2010-Ohio-6117; and *State v. Hickman*, 10th Dist. No. 09AP-617, 2010-Ohio-5548. See also *Cook v. State of Ohio*, 10th Dist. No. 10AP-641, 2011-Ohio-906 (case remanded to reinstate prior classification; individuals who filed their petitions prior to the ruling in *Bodyke* are entitled to the same relief granted in *Bodyke*); and *Powell v. State of Ohio*, 10th Dist. No. 10AP-640, 2011-Ohio-1382, ¶2 ("because the Supreme Court of Ohio did not dismiss the many cases pending before it at the time it decided [*Bodyke*], the Supreme Court did not intend to nullify the petition process as to cases pending when *Bodyke* was decided.")

{¶14} Accordingly, we sustain appellant's sole assignment of error. Therefore, we reverse the judgment of the Franklin County Court of Common Pleas and remand this matter to that court with instructions to: (1) vacate appellant's Tier III sexual offender classification pursuant to the AWA, and (2) reinstate his prior classification as a sexual predator and his prior community notification and registration orders.

*Judgment reversed and
cause remanded with instructions.*

KLATT and TYACK, JJ., concur.
