

[Cite as *State v. Reddish*, 2009-Ohio-3643.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 22866
Plaintiff-Appellee	:	
	:	Trial Court Case No. 97-CR-1670
v.	:	
	:	(Criminal Appeal from
ARTESS LEWIS REDDISH	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 24th day of July, 2009.

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FAIN, J.

{¶ 1} Defendant-appellant Artess Lewis Reddish appeals from a sentence imposed by the trial court during a resentencing hearing held pursuant to R.C. 2929.191. Reddish contends that the trial court erred in failing to give him full and fair notice during

the hearing of his mandatory Tier III sex offender classification, and the impact, requirements, and potential penalties under the law.

{¶ 2} We conclude that the trial court did not err, because the court did not need to make a determination as to Reddish's status, nor was the court responsible for notifying Reddish of the requirements of the law, as amended. Sex offender classification under S.B. 10 attaches by operation of law and does not encompass a judicial determination. Classification is an administrative decision and is determined solely upon the offense for which an offender has been convicted. Accordingly, the judgment of the trial court is Affirmed.

I

{¶ 3} In April 1998, Reddish was convicted of two counts of rape, two counts of robbery, and one count each of kidnapping, grand theft (motor vehicle), and gross sexual imposition, and was sentenced to a total of thirty-three years in prison. We affirmed the conviction and sentence on appeal. See *State v. Reddish* (Oct. 15, 1999), Montgomery App. No. 17323.

{¶ 4} The original termination entry is not part of the current record, and our prior opinion does not discuss Reddish's sex offender status.

{¶ 5} According to our prior opinion, Reddish was indicted for two separate offenses. The first offense occurred in May 1997, when Reddish robbed and abducted a woman, and then dragged her to a post office parking lot, where he physically and sexually attacked her. The victim described her attacker, but was not successful in identifying a particular suspect when she viewed police composites a few days after the

attack. Id. at *1-2.

{¶ 6} Approximately one month later, a second victim was robbed and attacked within a few blocks of the first crime. This time, the victim was able to describe a striped shirt that the assailant had worn, and a security officer also located a witness who had seen an individual of the same description enter a nearby apartment. The police subsequently apprehended Reddish in the apartment. Id. at *2.

{¶ 7} An investigating detective noticed similarities between the two crimes, and created a photospread containing pictures of six persons, including Reddish. The detective showed the photospread to the first victim, who immediately identified Reddish as her attacker. Id. at *3. Reddish was indicted for both incidents, was convicted, and was sentenced to a total of thirty-three years in prison. However, the trial court apparently did not include provisions in the sentence about post-release control.

{¶ 8} In June 2008, the trial court issued an entry and order requiring Reddish to be transported to court for resentencing, pursuant to R.C. 2929.191. At the hearing, the court reimposed the same sentence, and informed Reddish that he would be subject to five years post-release control after his release from imprisonment. The court also outlined various sanctions that could be imposed for violations of post-release control or other laws, and informed Reddish of his appeal rights. In addition, the trial court noted that Reddish had been convicted of a sexually-oriented offense, was a sexually oriented offender and sexual predator, and would be subject to reporting and verification requirements. The trial court then filed a nunc pro tunc entry on July 18, 2008, imposing the thirty-three year sentence, designating Reddish as a sexually oriented offender and sexual predator, and imposing the post-release control requirements discussed in the hearing.

{¶ 9} Reddish now appeals from the nunc pro tunc entry.

II

{¶ 10} Reddish's sole assignment of error is as follows:

{¶ 11} "WHETHER DEFENDANT'S 2008 RESENTENCING FOR HIS 1999 CONVICTIONS RE POST-RELEASE CONTROL AND SEX OFFENDER STATUS WAS PREJUDICIAL[,] DEFICIENT, ERRONEOUS AS A MATTER OF LAW, OR IN ANY WAY VIOLATED DEFENDANT'S CONSTITUTIONAL RIGHT TO DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION."

{¶ 12} Under this assignment of error, Reddish concedes that the trial court gave proper notice of the mandatory five-year period of post-release control, and of Reddish's potential liability for violations. Reddish contends, however, that the trial court failed to provide full and fair notice of all potential requirements and liabilities associated with his designation as a Tier III sex offender.

{¶ 13} R.C. 2929.191 allows a trial court to correct judgments of conviction where the court originally failed to notify an offender of post-release supervision requirements, or to include a statement to that effect in the judgment of conviction. Under R.C. 2929.191(C), the court must hold a hearing before issuing the correction, and must give notice to the offender, the prosecution, and the Department of Rehabilitation and Correction. The offender is also entitled to appear at the hearing, either in person or by video-conferencing.

{¶ 14} In the present case, the trial court complied with R.C. 2929.191, by permitting Reddish to appear, and by appropriately outlining post-release control requirements.

Reddish does not challenge the propriety of the court's actions in this regard. Reddish does assert that the trial court erred in failing to inform him that he was classified as a Tier III sex offender, and that he would be required to report to the local sheriff every ninety days for the rest of his life, would be subject to notification requirements, and would be subject to limitations about where he could live. Reddish, therefore, contends that this case should be remanded to the trial court so that he can be fully informed about these matters.

{¶ 15} At the hearing, the trial court made various comments about Reddish's status as a sexual predator and the fact that reporting and verification requirements would apply, but did not discuss these matters in detail. The State notes in its brief that it is not the trial court, but the Attorney General of Ohio, who is responsible for classifying sex offenders and notifying them of requirements, under the most recent sex offender classification law. We agree with the State.

{¶ 16} R.C. 2950.032 became effective on July 1, 2007; it requires the Attorney General to determine the sex-offender tier for each defendant serving a prison term in a state correctional institution for a sexually-oriented offense. The classification is based on changes that were to be implemented to R.C. Chapter 2950 on January 1, 2008. The Attorney General is also charged with providing the Department of Rehabilitation and Correction with documents describing the classification and duties required of each offender. See R.C. 2950.032(A)(1)(a). Either the Attorney General or the Department of Rehabilitation and Correction is required to notify each imprisoned offender of the changes in the law, the new classification of the offender as a Tier I, II, or III sex-offender, and the offender's hearing rights under R.C. 2950.032(E). See R.C. 2950.032(A)(1)(c) and

(A)(2)(a)-(d).

{¶ 17} R.C. 2950.032(E) allows imprisoned offenders to request court hearings as a matter of right, by filing petitions no later than sixty days after the offender receives the notice of his or her classification. If the court finds that the offender has proven by clear and convincing evidence that the new registration requirements do not apply, the court is required to issue an order stating that the requirements are inapplicable. See R.C. 2950.032(E) and R.C. 2950.031(E). Failure to timely request a hearing waives the right, and the offender is then bound by the Attorney General's determination. *Id.*

{¶ 18} We noted in *State v. Barker*, Montgomery App. No. 22963, 2009-Ohio-2774, that:

{¶ 19} “[T]he new Tier classifications under S.B. 10 operate as a matter of law, not by judicial determination. S.B. 10 abolished the former classifications of sexually oriented offenders, habitual sex offenders, or sexual predators. A legal designation of a ‘sexual predator,’ which previously required a hearing, no longer exists. * * * Rather, sex offenders are now classified within Tiers based solely on the offense of their conviction. * * *

{¶ 20} “S.B. 10 also provides for the reclassification of all offenders who were classified and still had duties under the former law when S.B. 10 came into effect. The act of reclassifying sex offenders does not encompass a judicial determination, but it is determined solely upon the offense for which the offender was convicted. Nor does it disturb a prior judicial determination. For example, a sex offender who received a sexual predator hearing where the judge judicially determined that there was a likelihood of recidivism and that the offender would have to register every 90 days for life was automatically reclassified to a Tier III offender, which contains the same registration

requirements as before.” Id. at ¶9-10 (citations omitted).

{¶ 21} Because Reddish’s classification arises by operation of law, based on his offenses, the trial court was not required to hold a hearing, nor was the court required to advise Reddish of his duties as a Tier III sex offender. Reddish’s remedy was to timely request a hearing after receiving notice of his classification from the Attorney General or from the Department of Rehabilitation and Correction.

{¶ 22} Reddish’s sole assignment of error is overruled.

III

{¶ 23} Reddish’s sole assignment of error having been overruled, the judgment of the trial court is Affirmed.

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FROELICH and HARSHA, JJ., concur.

(Hon. William H. Harsha, judge from the Fourth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

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