

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

STATE OF OHIO

Appellant

v.

JACOB WILSON

Appellee

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C.A. No. 2025-CA-71

Trial Court Case No. 25-CR-0388

(Criminal Appeal from Common Pleas
Court)

**FINAL JUDGMENT ENTRY &
OPINION**

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Pursuant to the opinion of this court rendered on September 11, 2026, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



ROBERT G. HANSEMAN, JUDGE

LEWIS, P.J., and TUCKER, J., concur.

OPINION
CLARK C.A. No. 2025-CA-71

JOHN M. LINTZ, Attorney for Appellant
CARL J. BRYAN, Attorney for Appellee

HANSEMAN, J.

{¶ 1} The State of Ohio appeals the Clark County Common Pleas Court's judgment sentencing Jacob Wilson to community control sanctions upon his conviction of failure to register in violation R.C. 2950.05. The State argues that Wilson's sentence is contrary to law. For the reasons that follow, the judgment is affirmed.

I. Facts and Course of Proceedings

{¶ 2} In 2012, Wilson was convicted of unlawful sexual conduct with a minor, a fourth-degree felony, in Clark C.P. No. 2012-CR-515.¹ In accordance with Revised Code Chapter 2950, the trial court classified Wilson as a Tier II sex offender. The Tier II registration imposed change of address notification and verification requirements, including that Wilson personally register his address with the sheriff of the county in which he resided every 180 days for 25 years.

{¶ 3} In 2019, Wilson was indicted in Clark C.P. No. 2019-CR-10 for failure to verify his address and failure to register a change of address in violation of R.C. 2950.05 and R.C. 2950.06. Both charges were felonies of the fourth degree. Wilson was ultimately convicted of one reduced charge of *attempted* failure to verify, a fifth-degree felony.

1. The indictment in this case, which references Wilson's prior unlawful sexual conduct with a minor conviction, incorrectly describes the offense as a third-degree felony. The plea form and judgment entry of conviction in the unlawful sexual conduct with a minor case itself both indicate that Wilson was convicted of the offense as a fourth-degree felony.

{¶ 4} In late 2023 and continuing to early 2025, Wilson failed to register his address. He was consequently indicted on four counts of failure to register under R.C. 2950.05(A) and (F)(1). The indictment contained a specification that Wilson had a prior offense from 2019 for *attempted* failure to verify. Wilson pled guilty to one count of failure to register, and the remaining three charges were dismissed. When Wilson entered his plea, the State and the trial court believed that Wilson was subject to a mandatory definite three-year prison term under R.C. 2950.99(A)(1)(b)(iii) and 2950.99(A)(2)(b). It was also believed that Wilson's offense was a felony of the third degree.

{¶ 5} After Wilson pled guilty, but prior to his sentencing hearing, the trial court journalized an entry determining that R.C. 2950.99(A)(1)(b)(iii) and 2950.99(A)(2)(b) were unconstitutional as applied to Wilson. The trial court based its decision on its error during Wilson's plea hearing in the 2012 unlawful sexual conduct with a minor case. The trial court indicated that, at the plea hearing, it had misinformed Wilson that any violation of failure to register would be a felony of the fourth degree. Citing principals of fundamental fairness and due process, the trial court determined that it would violate Wilson's fundamental rights if it imposed the mandatory three-year prison term in accordance with R.C. 2950.99(A)(1)(b)(iii) and 2950.99(A)(2)(b). The trial court determined that the necessary remedy was to sentence Wilson for having committed the offense as a fourth-degree felony.

{¶ 6} Wilson's sentencing hearing in this case followed on August 25, 2025. At the hearing, the State reiterated its belief that the law required the trial court to impose a mandatory three-year prison sentence. However, the trial court imposed a two-year term of community control sanctions. The court's sentencing entry stated that it had considered the purposes and principals of sentencing and that community control sanctions would not

demean the seriousness of Wilson's offense. The entry noted the trial court's reduction of Wilson's offense to a fourth-degree felony.

{¶ 7} The State timely appealed Wilson's sentence. In its sole assignment of error, the State claims that Wilson's sentence is contrary to law. The State cites R.C. 2950.99(A)(1)(b)(iii) and 2950.99(A)(2)(b), which require, at a minimum, a three-year definite prison term that may not be reduced for offenders who have a prior conviction for failure to register.

II. Standard of Review

{¶ 8} R.C. 2953.08(B)(2) allows a prosecuting attorney to appeal as a matter of right any felony sentence that is claimed to be "contrary to law." The term "contrary to law" means "in violation of statute or legal regulations at a given time." *State v. Jones*, 2020-Ohio-6729, ¶ 34, quoting *Black's Law Dictionary* (6th Ed. 1990). "A sentence is contrary to law when it falls outside the statutory range for the offense or if the sentencing court does not consider R.C. 2929.11 and 2929.12." *State v. Burt*, 2025-Ohio-1758, ¶ 24 (2d Dist.), quoting *State v. Bartley*, 2023-Ohio-2325, ¶ 9 (2d Dist.).

{¶ 9} The State argues that Wilson's sentence is contrary to law, because the trial court did not impose the "definite prison term of no less than three years" as required by R.C. 2950.99(A)(2)(b). The State's argument would be correct *if* Wilson had a prior conviction for failure to register. See *State v. Ashcraft*, 2022-Ohio-4611 (affirming mandatory prison sentence imposed for repeat conviction of failure to provide change-of-address notification for sex-offender registration); R.C. 2950.99(A)(1)(b); R.C. 2950.99(A)(2)(b).

{¶ 10} Wilson argues that his 2019 conviction for attempted failure to verify his address does not qualify as a sentence-enhancing prior conviction. Therefore, Wilson contends that his offense in this case is a fourth-degree felony and R.C. 2950.99(A)(2)(b)

does not apply, so his sentence is not contrary to law.

III. R.C. 2950.99

{¶ 11} R.C. 2950.99(A)(1)(a)(ii) provides that “[i]f the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the first, second, third, or fourth degree if committed by an adult . . . , the offender is guilty of a felony of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition” If the offense that caused the registration requirement was a felony of the fifth degree or a misdemeanor if committed by an adult, then the degree of the offense of failure to register is a fourth-degree felony. R.C. 2950.99(A)(1)(a)(iii).

{¶ 12} However, if an offender has been previously convicted of failure to register or verify under R.C. 2950.04, 2950.041, 2950.05, or 2950.06, then R.C. 2950.99(A)(1)(b) states that the degree of the offense is either a third-degree felony if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration is fourth- or fifth-degree felony if committed by an adult, R.C. 2950.99(A)(1)(b)(iii), or is a felony of the same degree if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration is a first-, second-, or third-degree felony if committed by an adult. R.C. 2950.99(A)(1)(b)(ii).

{¶ 13} Thus, as a general rule, under the statutory scheme of R.C. 2950.99, if an offender does not have a prior conviction for failure to register or verify his or her address, then the degree of the registration offense is the same degree as the original offense that

formed the basis of the sex offender registration requirement. In Wilson's case, because he was convicted of fourth-degree felony unlawful sexual conduct with a minor, absent any prior conviction for failure to register, his offense of failure to register would also be a fourth-degree felony. If his prior conviction for *attempted* failure to register elevated the degree of Wilson's registration offense in this case, then his offense would be a third-degree felony and a definite three-year prison term would be required under R.C. 2950.99(A)(2)(b).

{¶ 14} Relevant to this appeal, R.C. 2950.99(A)(2)(b) provides:

In addition to any penalty or sanction imposed under division (A)(1)(b)(i), (ii), or (iii) of this section or any other provision of law for a violation of a prohibition in section 2950.04, 2950.041, 2950.05, or 2950.06 of the Revised Code, if the offender previously has been convicted of or pleaded guilty to, or previously has been adjudicated a delinquent child for committing, a violation of a prohibition in section 2950.04, 2950.041, 2950.05, or 2950.06 of the Revised Code when the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated under the prohibition is a felony if committed by an adult or a comparable category of offense committed in another jurisdiction, the court imposing a sentence upon the offender shall impose a definite prison term of no less than three years. The definite prison term imposed under this section shall not be reduced to less than three years pursuant to any provision of Chapter 2967. or any other provision of the Revised Code.

**IV. Attempted Failure to Register May Not Enhance the Degree of a Sex Offender
Registration Offense Under R.C. 2950.99(A)(1)(b) or Trigger the Mandatory Sentence
Required Under R.C. 2950.99(A)(2)(b)**

{¶ 15} To determine whether Wilson’s sentence is contrary to law, we must first determine whether an *attempted* failure to register or verify counts as a prior conviction that triggers the enhancement provisions of R.C. 2950.99. The First District Court of Appeals addressed this very issue in relation to the application of R.C. 2950.99(A)(2)(b). *State v. Wilson*, 2010-Ohio-2767 (1st Dist.). Owing to the plain and unambiguous language of the statute, the court concluded that the enhancement provision applied only to completed offenses for failure to register or verify, not attempted violations. *Id.* at ¶ 5. The court reasoned, “R.C. 2950.99(A)(2)(b) contains no provision requiring a mandatory term for a defendant convicted only of an attempt offense.” *Id.* Because R.C. 2950.99 did not expressly include an “attempt” in its penalty enhancement provisions, an “attempt” did not qualify as a prior conviction.

{¶ 16} Shortly after the First District rendered its decision on this issue, the Sixth District Court of Appeals reached the same conclusion. *State v. Hoselton*, 2011-Ohio-1396 (6th Dist.). The Sixth District concluded that a defendant’s prior conviction of attempt to violate R.C. 2950.06 (requiring address verification) was not a prior conviction that triggered the sentencing enhancement provision of R.C. 2950.99(A)(2)(b). *Id.* at ¶ 10-11. In light of the plain meaning of R.C. 2950.99(A)(2)(b), such priors are “clearly and expressly limited to actual violations themselves.” *Id.* at ¶ 10.

{¶ 17} The Eighth District Court of Appeals has also reached the same conclusion. *State v. Beckwith*, 2017-Ohio-4298 (8th Dist.). Quoting R.C. 2901.04(A), the court reasoned that “[t]he Revised Code expressly states that ‘sections of the Revised Code defining

offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.” *Id.* at ¶ 25 . The court concluded, “Construing [R.C. 2950.99(A)(2)(b)] against the state and liberally in favor of the defendant, we are required to reverse the trial court’s sentence of appellant based on the enhancement provision of R.C. 2950.99. The trial court erred in applying the statute’s enhancement provision and elevating appellant’s offense based on a prior conviction of attempted reporting violation.” *Id.*

{¶ 18} While not a case regarding an attempted failure to register or verify an address, the Third District Court of Appeals recently held that an attempted gross sexual imposition conviction is not a prior offense for the purpose of imposing the mandatory prison sentencing enhancement in R.C. 2907.05(C)(2). *State v. Risch*, 2025-Ohio-2484 (3rd Dist.). The logic is similar. As with the enhancement provisions of R.C. 2950.99, a sentence is enhanced under R.C. 2907.05(C)(2) only if the defendant has been convicted of or pled guilty to certain specified offenses.

{¶ 19} We agree with the reasoning of our sister courts and do not find the word “attempt” anywhere in R.C. 2950.99. We will not insert a word into a statute where it does not appear. *See, e.g., In re Application of Columbus S. Power Co.*, 2016-Ohio-1608, ¶ 49. The General Assembly is vested with the authority to define offenses. It has included attempt offenses in the Revised Code and may do so where it wants them to apply. However, the General Assembly did not do so in R.C. 2950.99. Therefore, we do not interpret Wilson’s attempted offence to be a qualifying prior conviction for the purposes of the enhancing provisions of R.C. 2950.99. *Compare State v. Taylor*, 2007-Ohio-1950, ¶ 11, 14, 17 (“attempted possession of illegal drugs is a drug-abuse offense, and an individual convicted of an attempted drug-abuse offense is subject to the mandatory sentencing provisions of R.C. 2925.11” because the specific drug abuse statute, which defines drug abuse offenses

to include an attempted drug offense, controls over the general attempt statute). See *also* R.C. 2950.01(A)(14) (defining a “sexually oriented offense” to also include “[a]ny attempt to commit, conspiracy to commit, or complicity in committing” certain enumerated offenses).

{¶ 20} We hold that Wilson’s prior conviction of *attempted* failure to register does not qualify as a prior conviction that elevated the degree of his offense under R.C. 2950.99(A)(1)(b) or triggered the mandatory definite three-year prison term under R.C. 2950.99(A)(2)(b). Having not been convicted of a qualifying prior offense, Wilson’s failure to register conviction is a fourth-degree felony, and he was not subject to a mandatory prison sentence. The trial court correctly sentenced Wilson in accordance with R.C. 2929.11 through 2929.14, and his sentence is not contrary to law.

{¶ 21} The State’s assignment of error is overruled.

V. Conclusion

{¶ 22} Having overruled the State’s sole assignment of error, the judgment of the trial court is affirmed.

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LEWIS, P.J., and TUCKER, J., concur.