

IN THE SUPREME COURT OF OHIO

IN RE: A.R.,

* **CASE NO. 09-0223**

*

* **ON APPEAL FROM THE WARREN**
* **COUNTY COURT OF APPEALS,**
* **TWELFTH APPELLATE DISTRICT**

*

* **COURT OF APPEALS CASE NO.**
* **CA-2008-03-036**

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**MEMORANDUM OF THE STATE OF OHIO IN OPPOSITION TO
APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION**

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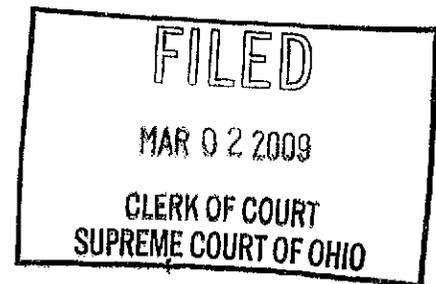


TABLE OF CONTENTS

Page Number

EXPLANATION OF WHY THIS CASE IS NOT A CASE OF GREAT PUBLIC OR GENERAL INTEREST OR THAT IT INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION..... 1

STATEMENT OF THE CASE AND FACTS 2

ARGUMENT.....3

STATE’S RESPONSE TO THE FIRST PROPOSITION OF LAW.....3

STATE’S RESPONSE TO THE SECOND PROPOSITION OF LAW.....4

STATE’S RESPONSE TO THE THIRD PROPOSITION OF LAW.....4

CONCLUSION.....5

APPENDIX

**EXPLANATION OF WHY THIS CASE IS NOT A CASE OF PUBLIC OR GREAT
GENERAL INTEREST AND DOES NOT INVOLVE A SUBSTANTIAL
CONSTITUTIONAL QUESTION**

This case is not a matter of public or great general interest, nor is there a substantial constitutional question. First, opposing counsel asks this Court to review the constitutionality of Senate Bill 10, but this has already been addressed in *State v. Cook* (1998), 83 Ohio St. 3d 404, 1998-Ohio-291; *State v. Williams* (2000), 88 Ohio St. 3d 513, 2000-Ohio-428. Further, any lingering questions will be resolved by *In Re Smith*, 2008-Ohio-1624, discretionary appeal granted, 120 Ohio St. 3d 1416, 2008-Ohio-6166.

Second, opposing counsel relies on *In Re Cross*, (2002), 96 Ohio St. 3d 328 and argues that the lower court did not have jurisdiction to re-classify Adam. Unlike *In Re Cross*, however, where the court re-imposed a suspended sentence to ODYS after the juvenile was released from probation – the lower court in this case simply corrected a previous error to properly classify the juvenile.

Finally, even if the Twelfth District Court of Appeals erred in remanding the case, the result would be the same. That is, Senate Bill 10 requires the re-classification of all offenders who were classified prior to January 1, 2008. Thus, had the lower court not remanded the case, the juvenile court would have still been obligated to re-classify Adam.

STATEMENT OF THE CASE AND FACTS

Adam was convicted of Gross Sexual Imposition R.C. 2907.05 after molesting a 6-year-old victim in May of 2001. Just over a year after being released from a sex offender treatment program, Adam re-offended with a 5-year-old victim and pled guilty to Rape in violation of R.C. 2907.02 in September, 2003. Adam was originally sentenced to a secure residential treatment facility (Mary Haven), but his suspended sentence to the Ohio Department of Youth Services (ODYS) was enforced after he attempted to escape.

As part of his original disposition, the juvenile court scheduled Adam for a sex offender registration/classification hearing upon Adam's release from Mary Haven per R.C. 2152.83(B). However, pursuant to R.C. 2952.82(A), the trial court was required to classify Adam as a sex offender registrant. Thus, on June 28, 2004, the State filed a motion requesting the court to correct that mistake and to classify Adam as a sex offender registrant pursuant to R.C. 2952.82(A).

Although Adam was released from ODYS on July 31, 2006 – he remained on parole and was subject to various restrictions. Thus, the Warren County Juvenile Court (WCJC) retained jurisdiction over Adam when a hearing was held and Adam was classified as a habitual sex offender on September 13, 2006. The court, however, made this determination based upon R.C. 2152.83(B) when it should have done so pursuant to R.C. 2152.83(A). Adam appealed that decision; hence, the lower court retained jurisdiction to correct errors even though Adam was later released from parole.

In the first appeal, *In re AR* (2007), Ohio App. 12 Dist. 2007-Ohio-5191, the court held that the WCJC failed to properly classify the Adam in accordance with the applicable statute, R.C. 2152.82(A). The court remanded the case back to the WCJC, for entry of a new disposition. *Id.* at ¶ 24.

In its analysis, the 12th District Court distinguished the case from *Bezak*, a recent decision by the Supreme Court. *Id.* at ¶ 39-42. The court distinguished *Bezak*, *inter alia*, because in *Bezak*, the state had sought to further punish the defendant, while Adam was not being punished, but merely reclassified as a sex offender. *Id.*

Upon remand, the WCJC re-classified Adam as a Tier III sex offender based upon Senate Bill 10. Adam appealed that decision. In the second appeal, *In re A.R.* (2008), Ohio App. 12 Dist. 2008-Ohio-6566, the 12th District Court ruled that pursuant to the doctrine of the law of the case, the lower court properly followed the mandate of the reviewing court. *Id.* at ¶ 13. The 12th District Court further distinguished Adam's case from *In Re Cross*, (2002), 96 Ohio St. 3d 328, noting that unlike *Cross*, where the court re-imposed a term in ODYS after the juvenile was released from probation, the WCJC was simply correcting a mistake and reclassifying the juvenile. *Id.* at ¶ 15-16. Finally, the court noted that even if they had erred in remanding the case, the result would be the same because Senate Bill 10 requires the re-classification of all offenders who were classified prior to January 1, 2008. *Id.* at ¶ 22.

ARGUMENT

STATE'S RESPONSE TO THE FIRST PROPOSITION OF LAW

Opposing counsel asks this Court to review the Constitutionality of Senate Bill 10, but this has already been addressed in *State v. Cook* (1998), 83 Ohio St. 3d 404, 1998-Ohio-291; *State v. Williams* (2000), 88 Ohio St. 3d 513, 2000-Ohio-428. Further, any lingering questions will be resolved by *In Re Smith*, 2008-Ohio-1624, discretionary appeal granted, 120 Ohio St. 3d 1416, 2008-Ohio-6166.

STATE'S RESPONSE TO THE SECOND PROPOSITION OF LAW

Opposing counsel argues that the WCJC did not have jurisdiction to re-classify Adam as a sex offender. The 12th District Court of Appeals, however, properly ruled that the law of the case doctrine mandated the lower court to correct its previous error. *See In re A.R.* at ¶ 13.

The procedural history is important to note in this case. Although Adam was released from ODYS on July 31, 2006 – he remained on parole and was subject to various restrictions. Thus, the WCJC retained jurisdiction over Adam when his first sex offender hearing was held and Adam was classified as a habitual sex offender on September 13, 2006. Adam appealed that decision; hence, the lower court retained jurisdiction to correct errors even though Adam was later released from parole before the Twelfth District Court of Appeals issued its decision.

Moreover, it is important to note that regardless of whether the 12th District Court of Appeals remanded the case properly or not, the WCJC would have been required by Senate Bill 10 to reclassify the juvenile anyway. Thus, the question is moot.

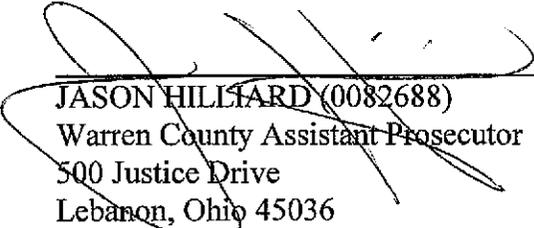
STATE'S RESPONSE TO THE THIRD PROPOSITION OF LAW

Opposing counsel relies on *In re Cross* (2002), 96 Ohio St.3d 328, and argues that the lower court erred in re-classifying Adam. Unlike *Cross*, however, where the court imposed a sentence to ODYS after the minor had been released from probation, the WCJC simply corrected a previous error to properly classify the juvenile. That is, Adam's punishment was not increased and he was not "re-sentenced;" instead, he was reclassified. Finally, it must be noted again, that pursuant to Senate Bill 10, Adam would have been reclassified anyway notwithstanding the decision of the 12th District Court of Appeals.

CONCLUSION

As this case is not a matter of public or great general interest, nor is there a substantial constitutional question - this Court should deny the Defendant's motion.

RESPECTFULLY SUBMITTED,

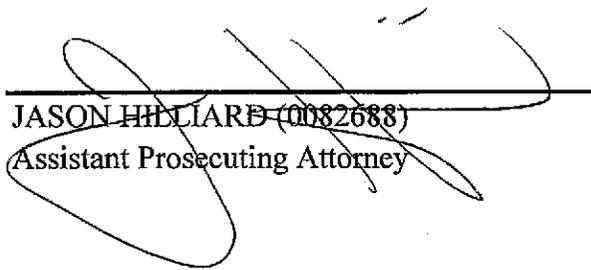


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CERTIFICATE OF SERVICE

I, hereby certify that a copy of the foregoing was sent by regular U.S. Mail to Amanda Powell, 8 East Long St. - 11th Floor Columbus, Ohio 43215 on this 2nd day of February 2009.

Respectfully Submitted,



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