

ORIGINAL

IN THE SUPREME COURT OF OHIO

ROMAN CHOJNACKI

Appellant

Case Nos. 2008-0991 &
2008-0992

vs.

RICHARD CORDRAY, Ohio Attorney
General in his Official Capacity

Appellee

On Appeal from the Warren County Court
of Appeals Twelfth Appellate District
Court of Appeals
Case No. CA 2008-03040

SUPPLEMENTAL REPLY BRIEF OF AMICI CURIAE CUYAHOGA COUNTY PUBLIC
DEFENDER, FRANKLIN COUNTY PUBLIC DEFENDER, LAKE COUNTY PUBLIC
DEFENDER, MONTGOMARY COUNTY PUBLIC DEFENDER, STARK COUNTY
PUBLIC DEFENDER, AND AMERICAN CIVIL LIBERTIES UNION
IN SUPPORT OF APPELLANT ROMAN CHOJNACKI

COUNSEL FOR APPELLEE:

RICHARD CORDRAY
Office Of The Ohio Attorney General

By: BENJAMIN C. MIZER (#0083089)
Solicitor General
ALEXANDRA T. SCHIMMER (#0075732)
Chief Deputy Solicitor General
CHRISTOPHER P. CONOMY (#0072094)
Assistant Solicitor
30 East Broad Street, 17th Floor
Columbus OH 43215
614-466-8980
614-466-5087 fax
benjamin.mizer@ohioattorneygeneral.gov

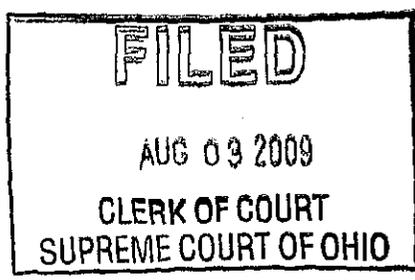
COUNSEL FOR APPELLANT:

TIM YOUNG
Ohio Public Defender

By: SARAH M. SCHREGARDUS
(#0080932)
Counsel of Record
250 E. Broad Street, Suite 1400
Columbus OH 43215
614-466-5394
614-752-5167 Fax
sarah.schregardus@opd.ohio.gov

COUNSEL FOR AMICI CURIAE

ROBERT L. TOBIK
Cuyahoga County Public Defender
By: CULLEN SWEENEY (# 0077187)
JOHN T. MARTIN (# 0020606)
310 Lakeside Avenue, Suite 200
Cleveland OH 44113



216-443-3660
216-443-6911 Fax
csweeney@cuyahogacounty.us

PAUL SKENDELAS (#0014896)
Franklin County Public Defender
Assistant Public Defender
373 South High Street
Columbus, Ohio 43215
614-719-8867

R. PAUL LAPANTE (#0015864)
Lake County Public Defender
VANASSA R. CLAPP (#0059102)
Supervising Attorney
125 East Erie Street
Painesville, Ohio 44077
440-350-3200

GLEN H. DEWAR (#0042077)
Montgomery County Public Defender
Director
117 S. Main Street, Suite 400
Dayton, Ohio 45422
937-225-5572

JEAN A. MADDEN (#0046672)
Stark County Public Defender
Assistant Public Defender
200 West Tuscarawas, Suite 200
Canton, Ohio 44702
330-451-7200

CARRIE L. DAVIS (# 0077041)
ACLU of Ohio Foundation, Inc.
Max Wohl Civil Liberties Center
4506 Chester Avenue
Cleveland, Ohio 44103
216-472-2220

JEFFREY M. GAMSO (0043869)
ACLU Cooperating Counsel
GAMSO, HELMICK & HOOLAHAN
1119 Adams Street, Second Floor
Toledo, Ohio 43604
jmgamso@buckeye-express.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION..... 1

LAW AND ARGUMENT..... 2

I. R.C. 120.16 Requires the Appointment of Counsel for Indigent Petitioners at R.C. 2950.031 and R.C. 2950.32 Reclassification Hearings. 2

II. State and Federal Due Process Requires the Appointment of Counsel for Indigent Petitioners at R.C. 2950.031 and R.C. 2950.032 Reclassification Hearings. 4

III. State and Federal Equal Protection Requires the Appointment of Counsel for Indigent Petitioners at R.C. 2950.031 and R.C. 2950.032 Reclassification Hearings 13

CONCLUSION 16

SERVICE..... 17

TABLE OF AUTHORITIES

CASES

<i>Barrwell v. State</i> , Cuyahoga Common Pleas Case No. 648810 -----	5
<i>Branch v. State</i> , Cuyahoga Common Pleas Case No. 658637 -----	6
<i>Daniels v. State</i> , Cuyahoga Common Pleas Case No. 648436 -----	5
<i>Dieter v. State</i> , Cuyahoga Common Pleas Case No. 08-CV-649784 -----	15
<i>Finklea v. State</i> , Cuyahoga Common Pleas Case No. 667460 -----	6
<i>Funtash v. State</i> , Cuyahoga Common Pleas Case No. 646795 -----	5
<i>Gawloski v. State</i> , Cuyahoga Common Pleas Case No. 653113 -----	5
<i>Gerace v. State</i> , Cuyahoga Common Pleas Case No. 648168 -----	6
<i>Gildersleeve v. State</i> , Cuyahoga App. No. 91515-91519 and 91521-91532, 2009 Ohio 2031 -----	10, 11
<i>Goellner v. State</i> , Cuyahoga Common Pleas Case No. 08-CV-649001 -----	15
<i>Goodwin v. State</i> , Cuyahoga Common Pleas Case No. 665225 -----	6, 9
<i>Graceffo v. State</i> , Cuyahoga Common Pleas Case No. 653116 -----	6
<i>Hamilton v. State</i> , Cuyahoga Common Pleas Case No. CV-08-649860 -----	15
<i>Hardnett v. State</i> , Cuyahoga Common Pleas Case No. 648170 -----	6, 8
<i>Johnson v. State</i> , Cuyahoga Common Pleas Case No. 686664 -----	6
<i>Kenney v. State</i> , Cuyahoga Common Pleas Case No. 648483 -----	5
<i>Lampkin v. State</i> , Cuyahoga Common Pleas Case No. 648856 -----	5
<i>Lipts v. State</i> , Cuyahoga Common Pleas Case No. 664212 -----	6
<i>Mahome v. State</i> , Cuyahoga Common Pleas Case No. 661140 -----	6, 14
<i>Moncrief v. State</i> , Cuyahoga Common Pleas Case No. CV-08-651446 -----	15
<i>Motley v. State</i> , Cuyahoga Common Pleas Case No. 650327 -----	6, 8-9
<i>Orr v. State</i> , Cuyahoga Common Pleas Case No. 647701 -----	5
<i>Patrick v. State</i> , Cuyahoga Common Pleas Case No. 648826 -----	5
<i>Pena v. State</i> , Cuyahoga Common Pleas Case No. 649201 -----	5
<i>Pratts v. State</i> , Cuyahoga Common Pleas Case No. 647222 -----	6
<i>Price v. State</i> , Cuyahoga Common Pleas Case No. 646027 -----	5
<i>Ray v. State</i> , Cuyahoga Common Pleas Case No. 649119 -----	5, 7
<i>Riley v. State</i> , Cuyahoga Common Pleas Case No. 647820 -----	5
<i>Rosado v. State</i> , Cuyahoga Common Pleas Case No. 648433 -----	5
<i>Schiewe v. State</i> , Cuyahoga Common Pleas Case No. 646037 -----	5
<i>State v. Hayden</i> (2002), 96 Ohio St. 3d 211 -----	11, 12
<i>State v. Sullivan</i> , Cuyahoga Common Pleas Case No. CR 368252 -----	5
<i>Watt v. State</i> , Cuyahoga Common Pleas Case No. 647885 -----	6
<i>Wooten v. State</i> , Cuyahoga Common Pleas Case No. 08-CV-656419 -----	15

STATUTES

R.C. 120.16 -----	1-4
R.C. 2941.147 -----	7

R.C. 2950.01 ----- 7
R.C. 2950.031----- passim
R.C. 2950.032----- passim
R.C. 2950.033----- 9
R.C. 2950.11 ----- 10, 11

OTHER AUTHORITIES

Ohio Attorney General Opinion 99-031 -----2-3

INTRODUCTION

This case originally involved the question of whether the decision to deny the appointment of counsel in a proceeding challenging the application of the Adam Walsh Act (“AWA” or “Senate Bill 10”) is a final appealable order. After briefing and argument on this question, this Court ordered the parties to submit supplemental briefing on: 1) Whether sex offender classification proceedings conducted pursuant to Senate Bill 10 are criminal or civil proceedings; and 2) Whether sex offenders are entitled to the appointment of counsel for Senate Bill 10 reclassification proceedings if those proceedings are civil in nature.

On May 4, 2009, amici filed a supplemental brief in support of appellant Roman Chojnacki. While amici agree with appellant Chojnacki that sex offender reclassification proceedings are criminal proceedings, amici chose to focus on the second question in their supplemental brief. In that brief, amici explained that, even if sex offender reclassification proceedings are civil in nature, reclassified sex offenders are entitled to counsel as a matter of constitutional due process and equal protection as well as pursuant to R.C. 120.04-.06, R.C. 120.13-.18, R.C. 120.23-.28, and R.C. 120.33, the statutory provisions which outline the scope of public defender duties and obligations.¹

Appellee Ohio Attorney General Richard Cordray (“Attorney General Cordray”) filed his supplemental merit brief on June 23, 2009, arguing that sex offender reclassification proceedings are civil and that reclassified sex offenders are not entitled to counsel as a matter of constitutional or statutory law. Amici tailor this reply brief to address specific issues raised by the Attorney General Cordray’s supplemental brief.

¹ For the sake of simplicity, amici focus their subsequent statutory discussion on R.C. 120.16, which concerns the appointment of counsel through a county public defender system. However,

I. R.C. 120.16 Requires the Appointment of Counsel for Indigent Petitioners at R.C. 2950.031 and R.C. 2950.032 Reclassification Hearings.

Amici first argue that reclassified sex offenders are entitled to appointed counsel at AWA reclassification hearings pursuant to R.C. 120.16 because such hearings are “a stage in a proceeding that is instituted against a defendant charged with the commission of a violation of a state statute for which the penalty includes the potential loss of liberty.” OAG 99-031. In making this argument, amici relied, in part, on an advisory opinion issued by then Ohio Attorney General Betty Montgomery (“Attorney General Montgomery”) that county public defenders had a legal duty to represent offenders at sexual predator hearings under Megan’s Law. OAG 99-031.

Rather than adopting the position of his predecessor, Attorney General Cordray has elected to interpret R.C. 120.16 much more narrowly, so as to deny thousands of individuals the right to appointed counsel. While he maintains that his “position in this case is fully consistent with that 1999 opinion,” (OAG Supp. Br. at 23), his attempts to rationalize his departure from his predecessor fail. He argues that the 1999 Attorney General Opinion concerning Megan’s Law has no applicability to the instant case because Megan’s Law explicitly granted offenders a statutory right to counsel. (Supp. Br. at 22-23). In essence, he argues that Opinion 99-031’s interpretation of R.C. 120.16 has no applicability when a statute does not explicitly afford a sex offender the right to counsel at a hearing. Such a simplistic reading of Attorney General Montgomery’s Opinion 99-031 makes little sense given her lengthy analysis of R.C. 120.16.

In any case, Attorney General Cordray’s interpretation of R.C. 120.16 is incorrect. He maintains that the public defender’s statutory duties are not triggered in AWA reclassification

the same argument applies to counties who provide legal representation through the state public defender, a joint county public defender system, or a system of privately appointed counsel.

hearings because the reclassified offender is not “‘charged’ . . . ‘with the commission of an offense or act’ in this proceeding.” (OAG Supp. Br. at 22). In other words, according to Attorney General Cordray, a public defender’s statutory duties are not triggered at a reclassification hearing because the offender does not face a new criminal charge at that reclassification hearing.

Attorney General Cordray’s interpretation of R.C. 120.16 is inconsistent with the plain language of the statute as there is no requirement that the proceeding must involve a new criminal charge. On the contrary, as explained by Attorney General Montgomery, a sex offender classification hearing is a “stage of a proceeding” resulting from the offender having been “charged with the commission of an offense or act.” OAG 99-031. Thus, the public defender’s statutory duties are triggered “even though persons convicted of sexually oriented offenses face no potential loss of liberty at the sexual predator [classification] hearing.” *Id.* An individual’s reclassification under the Adam Walsh Act likewise flows from an offender having been charged with a sexually oriented offense and thus triggers the public defender’s statutory duties under R.C. 120.16.

Attorney General Cordray argues that Adam Walsh Act reclassification hearings should be distinguished from Megan’s Law classification hearings because they are initiated by the offender and not the State. (OAG Supp. Br. at 8 and 17). The Attorney General’s description of the “origin and posture” of AWA reclassification proceedings is truncated and elevates form over substance. Attorney General Cordray mischaracterizes the process by simply ignoring the critical fact that the *State* initiates the reclassification process by administratively reclassifying sex offenders without prior notice or a hearing. Thus, while it is technically true that the reclassification *challenge* is initiated by the offender, it is only initiated by the offender after the

offender was *first* reclassified by the State. Moreover, it is misleading for Attorney General Cordray to emphasize that the State is not seeking to impose new punishments or duties in response to a reclassification petition filed under R.C. 2950.031. The State does not need to impose any new punishments or duties at the reclassification hearing because it already, and unilaterally, imposed those new punishments and duties before the offender was afforded a hearing.

The only procedural difference between a Megan's Law classification hearing and a reclassification hearing under the Adam Walsh Act is one of timing. Under Megan's Law, offenders enjoyed the right to a hearing *before* their classification. Under the Adam Walsh Act, reclassified offenders enjoy the right to a hearing *after* their classification. This is a distinction without a difference with respect to the application of R.C. 120.16. Regardless of when the offender is afforded a hearing on their sex offender classification, he or she is entitled to appointed counsel pursuant to R.C. 120.16. Indeed, in many ways, the need for counsel is even more acute, under the AWA, where reclassified sexual registrants are required to find their way to court in order to undo a classification that has already gone into effect.

II. State and Federal Due Process Requires the Appointment of Counsel for Indigent Petitioners at R.C. 2950.031 and R.C. 2950.032 Reclassification Hearings.

While Attorney General Cordray asserts that "the risk of erroneous classification is minimal," (OAG Supp. Br. at 19, 20, and 24), the Ohio General Assembly clearly did not share that sentiment as it created an entire statutory proceeding, including a right to hearing, to challenge the reclassification imposed by the Attorney General. The purpose of the reclassification proceeding under R.C. 2950.031 is to serve as a check on the Attorney General's administrative reclassification process, which, as discussed below, has resulted in numerous

misclassifications. Appointed counsel is necessary, as a matter of due process, to ensure that the reclassification hearing meaningfully serves its intended purpose.

A. The Ohio Attorney General has made numerous classification errors which can only be corrected with the benefit of counsel.

Attorney General Cordray's bald assertion that the risk of misclassification is "low", "minimal," and "remote" does not comport with reality. (OAG Supp. Br. at 20 and 24).

Amicus Cuyahoga County Public Defender represents approximately 460 reclassified sex offenders and has identified misclassification errors in approximately 19% of these cases. While most of its cases have been stayed pending this Court's resolution of the constitutionality of the AWA, Amicus Cuyahoga County PD has obtained court orders correcting erroneous classifications in at least 27 cases. *See e.g. Riley v. State*, Cuyahoga Common Pleas Case No. 647820 (3/6/08 journal entry); *Rosado v. State*, Cuyahoga Common Pleas Case No. 648433 (3/10/08 journal entry); *Price v. State*, Cuyahoga Common Pleas Case No. 646027 (3/11/08 journal entry); *Gawloski v. State*, Cuyahoga Common Pleas Case No. 653113 (4/21/08 journal entry); *Funtash v. State*, Cuyahoga Common Pleas Case No. 646795 (5/5/08 journal entry); *Orr v. State*, Cuyahoga Common Pleas Case No. 647701 (5/5/08 journal entry); *Schiewe v. State*, Cuyahoga Common Pleas Case No. 646037 (5/9/08 journal entry); *Patrick v. State*, Cuyahoga Common Pleas Case No. 648826 (5/20/08 journal entry); *Pena v. State*, Cuyahoga Common Pleas Case No. 649201 (7/9/08 journal entry); *State v. Sullivan*, Cuyahoga Common Pleas Case No. CR 368252 (8/4/08 journal entry); *Barnwell v. State*, Cuyahoga Common Pleas Case No. 648810 (9/8/08 journal entry); *Daniels v. State*, Cuyahoga Common Pleas Case No. 648436 (9/17/08 journal entry); *Lampkin v. State*, Cuyahoga Common Pleas Case No. 648856 (9/19/08 journal entry); *Ray v. State*, Cuyahoga Common Pleas Case No. 649119 (9/19/08 and 3/2/09 journal entries); *Kenney v. State*, Cuyahoga Common Pleas Case No. 648483 (9/26/08 journal

entry); *Watt v. State*, Cuyahoga Common Pleas Case No. 647885 (9/29/08); *Motley v. State*, Cuyahoga Common Pleas Case No. 650327 (10/9/08 journal entry); *Hardnett v. State*, Cuyahoga Common Pleas Case No. 648170 (10/16/08 journal entry); *Goodwin v. State*, Cuyahoga Common Pleas Case No. 665225 (12/12/08 journal entry); *Finklea v. State*, Cuyahoga Common Pleas Case No. 667460 (12/15/2008 journal entry); *Mahome v. State*, Cuyahoga Common Pleas Case No. 661140 (3/9/09 journal entry); *Lipts v. State*, Cuyahoga Common Pleas Case No. 664212 (3/9/09 journal entry); *Pratts v. State*, Cuyahoga Common Pleas Case No. 647222 (3/30/09 journal entry); *Gerace v. State*, Cuyahoga Common Pleas Case No. 648168 (3/30/09 journal entry); *Graceffo v. State*, Cuyahoga Common Pleas Case No. 653116 (3/30/09 journal entry); *Branch v. State*, Cuyahoga Common Pleas Case No. 658637 (6/10/09 journal entry); *Johnson v. State*, Cuyahoga Common Pleas Case No. 686664 (6/15/09 journal entry).² These corrections would not have been identified or made without the assistance of counsel.

While Attorney General Cordray describes his reclassification duties as “entirely ministerial—he identified the offense of conviction, matched it to the proper tier, and then informed the offender,” (OAG Supp. Br. at 20), such a description grossly oversimplifies the reclassification process. It ignores the policy, legal, and fact-based determinations made by the Attorney General which are responsible for many of the misclassification errors. For instance, in cases involving an out-of-state conviction, the Attorney General conducts “a statutory language comparison” and decides “what comparable offense in Ohio that offender was convicted of in that original jurisdiction.”³ Such a legal and factual “comparable offense” assessment is not a

² These 28 journal entries are attached as Exhibit A to this reply brief.

³ This information was provided by then Ohio Attorney General Dann in his Response to Interrogatory No. 1 in *Doe v. Dann*, Case No. 1:08-CV-00220 (N.D. Ohio).

purely “ministerial” task, as suggested by Attorney General Cordray. The Attorney General’s Office’s out-of-state conviction assessment led to the misclassification error in *Ray v. State*, Cuyahoga Common Pleas Case No. 649119 (9/19/08 and 3/2/09). Based on its assessment of both California and Ohio law, the Attorney General’s Office concluded that the petitioner in *Ray* should be classified as a Tier II sex offender. Ultimately, after the petitioner received the assistance of counsel, the trial concluded that petitioner should not even be a classified sex offender under the Adam Walsh Act. *Ray v. State*, Cuyahoga Common Pleas Case No. 649119 (9/19/08 and 3/2/09).

The Attorney General makes other classification decisions which extend far beyond ministerial acts. The Adam Walsh Act includes numerous offenses which are only sexually-oriented offenses if “committed with a sexual motivation:” child enticement, menacing by stalking, unlawful restraint, abduction, kidnapping, aggravated murder, murder, unlawful death as a result of committing a felony, felonious assault. R.C. 2950.01(E)(1)(e); 2950.01(F)(1)(e) and (f); R.C. 2950.01(G)(1)(c), (d), (e). In prior legislation enacting Ohio’s Megan’s Law, the General Assembly established a process to determine whether certain non-sex offenses were committed with a sexual motivation: the sexual motivation specification, R.C. 2941.147. R.C. 2941.147 requires that the sexual motivation specification be included in the same indictment charging the underlying offense. Moreover, the sexual motivation specification only attaches if the defendant is convicted of the underlying criminal offense (or pleads to it) *and* a jury finds that the State has proven the existence of a sexual motivation beyond a reasonable doubt. However, in reclassifying individuals who committed non-sex offenses, the Attorney General’s Office did not simply include those individuals whose conviction “as a matter of record”

included a sexual motivation specification. Rather, it shortcut the constitutional protections established by R.C. 2941.147 and adopted the following “sexual motivation” review procedure:

To determine if an offense was committed with “sexual motivation,” the RA would find if there was either a companion conviction for a sexually oriented offense or if the original charging document indicated a companion sexually oriented offense was charged at the same time.⁴

This policy decision was not authorized by Senate Bill 10 and creates a real risk of misclassification. For example, Amicus Cuyahoga County PD represented a person who was charged with rape and felonious assault, but ultimately pled guilty only to felonious assault without a sexual motivation specification. Despite the absence of a conviction for a sexually-oriented offense, the Attorney General’s policy caused this person to be classified as a Tier III Sex Offender. Ultimately, after lengthy and complex briefing, the State, through the County Prosecutor, conceded that the individual should not be classified as a sex offender under the AWA. *Hardnett v. State*, Cuyahoga Common Pleas Case No. 648170 (10/16/08 journal entry).

Another example of the non-ministerial nature of the classification proceeding relates to the Attorney General’s classification of child-victim oriented offenders. The Adam Walsh Act provides that the following offenses shall result in an offender’s classification if committed against an individual under the age of 18 *even in the absence of a sexual motivation*: kidnapping, abduction, unlawful restraint, and child enticement. With the sole exception of child enticement, the age of the victim involved in these offenses is not generally apparent solely from the record of the offender’s conviction. The Attorney General’s Office therefore has to make a fact-based determination regarding the age of the victim based on some collateral records or investigation. Not surprisingly, this has led to mistakes where individuals were improperly included in the

⁴ This information was provided by then Attorney General Dann in his Response to Interrogatory No. 1 in *Doe v. Dann*, Case No. 1:08-CV-00220 (N.D. Ohio).

AWA sex offender registry. See e.g. *Motley v. State*, Cuyahoga Common Pleas Case No. 650327 (conviction involved abduction of an adult).

The Ohio Attorney General has also failed, in reclassifying offenders, to filter out those individuals who were convicted of a sex offense but who completed serving their sentence on that sex offense prior to the enactment of Megan's Law in 1997. In *State v. Champion*, this Court held that an individual does not have a duty to register under Megan's law if he or she completed serving the sex offense sentence prior to July 1, 1997. (2005), 106 Ohio St. 3d 120, syllabus. *Champion's* holding is significant to the proper application of the Adam Walsh Act because, as acknowledged by Attorney General Cordray, the AWA only applies to individuals who had still had a duty to register under Megan's Law as of July 1, 2007. (OAG Supp. Br. at 4, citing R.C. 2950.033). The Attorney General's Office does not appear to have made any attempt to consider the impact of *Champion* in its reclassification process. Instead, it continues to misapply the Adam Walsh Act to individuals who, based on *Champion*, had no duty to register under Megan's Law and thus no duty to register under the AWA. See e.g. *Goodwin v. State*, Cuyahoga Common Pleas Case No. 665225.

Beyond the misclassification problems caused by the Attorney General's faulty policy decisions, the Attorney General has made numerous "ministerial" errors in the course of reclassifying over 20,000 individuals. While some of these misclassification errors were based on inaccurate court information, many misclassifications were just plain mistakes. However, even the most basic of errors, which are obvious to counsel familiar with the Adam Walsh Act, are unlikely to be discovered by most indigent *pro se* petitioners in a R.C. 2950.031 proceeding. This is particularly true as the "notice" provided by the Attorney General's Office of an individual's reclassification does not provide sufficient information to enable laypersons to

determine whether they have been misclassified. The Attorney General's Office did not even take the simple step of including with the notice the one-page "Ohio Offense Tier[]" chart, attached to its supplemental brief as Exhibit A.

While the total number of classification errors is currently unknown, it cannot seriously be disputed that numerous classification errors have been made and most, if not all, of these classification errors would be missed (and arguably waived)⁵ by indigent petitioners who lack the assistance of court-appointed counsel.

B. Counsel is necessary for over 7000 Tier III sex offenders to receive relief from community notification pursuant to R.C. 2950.11(F)(2).

In its supplemental brief, Attorney General Cordray failed to address amici's argument that appointed counsel is critical to ensure that eligible Tier III offenders correctly request and receive relief from community notification pursuant to R.C. 2950.11(F)(2).

R.C. 2950.11(F)(2) provides that a Tier III sex offender is not subject to community notification if a court determines "that the person would not be subject to the notification provisions of this section that were in the version of this section that existed immediately prior to the effective date of this amendment." R.C. 2950.11(F)(2). Recently, the Eighth District Court of Appeals interpreted this provision to mean that the community notification provisions of the AWA do not apply to reclassified Tier III sex offenders *unless* they were subject to community

⁵ While amici would strenuously argue against waiver of misclassification claims, there is language in R.C. 2950.031 to support the argument that a petitioner waives a misclassification claim if he or she fails to raise it timely. R.C. 2950.031(E) provides in pertinent part:

If an offender or delinquent child fails to request a hearing in accordance with this division within the applicable sixty-day period specified in this division, the failure constitutes a waiver by the offender or delinquent child of the offender's or delinquent child's right to a hearing under this division, and the offender or delinquent child is bound by the determinations of the attorney general contained in the registered letter sent to the offender or child.

notification under Ohio's Megan's Law. *Gildersleeve v. State*, Cuyahoga App. No. 91515-91519 and 91521-91532, 2009 Ohio 2031, ¶ 73. In reaching that legal conclusion regarding a statutory provision "wrought with confusion," the Eighth District ruled in favor of several reclassified sex offenders who fortunately had the benefit of *appointed* counsel.⁶ *Pro se* indigent petitioners cannot reasonably be expected to adequately litigate this complex legal issue and thus are likely to be denied relief to which they are statutorily entitled. This is a widespread problem because approximately 7,167 individuals, who were not subject to community notification under Megan's Law, were reclassified as Tier III sex offenders *with community notification*.⁷ While all of these individuals are entitled to relief from community notification under R.C. 2950.11(F)(2), they will not receive such relief if they do not properly litigate this issue.

C. *State v. Hayden* (2002), 96 Ohio St. 3d 7 has no bearing on whether due process requires the appointment of counsel at reclassification proceedings.

In his supplemental brief, Attorney General Cordray relies heavily on this Court's decision in *State v. Hayden* (2002), 96 Ohio St. 3d 211 and claims that it forecloses any due process right to counsel in AWA reclassification hearings. (OAG Supp. Br. at 9, 13, 16-19). Its reliance on *Hayden* is misplaced.

In *Hayden*, this Court addressed the question of whether or not a trial court was required, as a matter of due process, to hold a hearing before classifying an individual as a sexually-oriented offender under Ohio's Megan's Law. *Id.* at 212-13. This Court concluded that no such hearing was constitutionally required because the "possibility of mistakes" was "pure

⁶ *Gildersleeve* was a consolidated appeal of numerous cases originating from the same trial court judge. That trial court judge appointed counsel to represent all *pro se* indigent petitioners.

conjecture” and because, if such mistakes were to occur, “legal remedies such as mandamus are available to correct such an error.” *Id.* at 215.

The situation presented here, with the administrative reclassification of over 20,000 sex offenders based on convictions that occurred as many as 35 years ago, is quite different. First, as discussed extensively above, erroneous reclassifications by the Attorney General are a reality. The only question is whether the 19% error rate observed by Amicus Cuyahoga County PD is too high or too low. In addition, the consequences of misclassification are far more severe under the Adam Walsh Act. As noted above, the Attorney General’s Office has misclassified individuals as Tier III Sex Offenders with the requirement of lifetime quarterly registration and community notification when those individuals should not have been classified at all under the Adam Walsh Act. The consequences of an erroneous classification under the AWA dwarf the consequences of misclassifying an individual as a sexually-oriented offender under Megan’s Law as that merely subjects the individual to a ten-year annual registration period without community notification.

Finally, the Ohio General Assembly expressly recognized mistakes were going to occur in reclassifying more than 20,000 registrants under the Adam Walsh Act which is why they established a statutory mechanism, including a *right* to a hearing, to correct them. R.C. 2950.031 and R.C. 2950.032. Thus, the State’s argument in *Hayden* that due process does not require a meaningless hearing has no application to the question presented here. The Ohio General Assembly has already decided that a hearing is necessary. The question here is whether due process requires the appointment of counsel at AWA reclassification hearings in order to ensure

⁷ This information was provided by then Attorney General Dann in his Response to Interrogatory No. 4 in *Doe v. Dann*, Case No. 1:08-CV-00220 (N.D. Ohio).

that those hearings are meaningful and serve their designed purpose. This Court's decision in *Hayden* does not help answer that question.

III. State and Federal Equal Protection Requires the Appointment of Counsel for Indigent Petitioners at R.C. 2950.031 and R.C. 2950.032 Reclassification Hearings.

As a matter of state and federal equal protection, individuals challenging their reclassification under Senate Bill 10 are entitled to the appointment of counsel for two separate reasons. First, the denial of counsel to *reclassified* sex offenders would violate their equal protection rights because *newly* classified sex offenders enjoy the benefit of appointed counsel. Second, because several counties and specific Cuyahoga County trial courts are appointing counsel for petitioners, those individuals who have been denied counsel merely due to their county of residence and/or the luck of the draw are being denied equal protection.

A. Newly classified sex offenders enjoy the benefit of appointed counsel at AWA classification hearings.

Attorney General Cordray concedes that “a newly classified offender enjoys the benefit of counsel’s presence for his S.B. 10 classification because the classification occurs during the sentencing hearing.” (OAG Supp. Br. at 23). He argues that there is nothing “irrational” about a procedure that affords newly classified offenders the assistance of counsel at classification hearings but denies appointed counsel to reclassified offenders. However, Attorney General Cordray’s argument proves just the opposite; namely, there is no rational basis for this distinction.

In essence, the Ohio Attorney General argues that counsel is unnecessary for newly classified offenders because the risk of misclassification is “remote” when the trial court “just presided over the individual’s criminal proceedings” and because the constitutional arguments involve the “retrospective application of S.B. 10” and not its prospective application. (OAG

Supp. Br. at 24). While amici disagree with Attorney General Cordray's position that presence of counsel at new classification hearings is "largely irrelevant," (OAG Supp. Br. at 24), they do agree that appointed counsel play a more vital role at *reclassification* hearings where the risk of error is much greater (as discussed *supra* in II.A) and where complex constitutional and contractual arguments need to be presented. Given the greater risk of error for reclassified sex offenders as opposed to newly classified sex offenders, it is simply irrational to afford the benefit of appointed counsel to newly classified sex offenders only. As such, the denial of counsel to reclassified sex offenders violates their equal protection rights.

B. Many reclassified sex offenders receive appointed counsel depending on the county in which they reside and the particular judge to which their case is assigned.

Appellant Chojnacki, and other reclassified sex offenders denied appointed counsel, are being denied equal protection because other similarly situated *reclassified* sex offenders have received appointed counsel. Attorney General Cordray does not address this particular equal protection argument in its brief.

In seventeen counties, trial courts generally appoint counsel to represent indigent petitioners challenging the application of the Adam Walsh Act.⁸ See AWA County Survey conducted by the Ohio Public Defender ("OPD AWA Survey") available at http://www.opd.ohio.gov/AWA_Attorney_Forms/AWA_SB10_County_Survey.pdf. In at least two other counties (Hamilton and Lawrence), trial courts sometimes appoint counsel. *Id.* In Cuyahoga County, specific trial court judges consistently appointed counsel for indigent petitioners. See e.g. *Mahome v. State*, Cuyahoga Common Pleas Case No. CV-08-661140

⁸ The seventeen counties include Auglaize, Brown, Clark, Clermont, Fairfield, Fayette, Franklin, Guernsey, Holmes, Logan, Medina, Montgomery, Ottawa, Preble, Putnam, Stark, and Wayne.

(Burnside, J.) (appointing counsel on 6/17/08); *Hamilton v. State*, Cuyahoga Common Pleas Case No. CV-08-649860 (Gallagher, Eileen A., J.) (appointing counsel on 3/28/08); *Goellner v. State*, Cuyahoga Common Pleas Case No. 08-CV-649001 (Gallagher, H., J.) (appointing counsel on 2/12/08); *Wooten v. State*, Cuyahoga Common Pleas Case No. 08-CV-656419 (McCafferty, J.) (appointing counsel on 5/6/08); *Dieter v. State*, Cuyahoga Common Pleas Case No. 08-CV-649784 (McGinty, J.) (appointing counsel on 4/8/08); *Moncrief v. State*, Cuyahoga Common Pleas Case No. CV-08-651446 (Saffold, J.) (appointing counsel on 4/3/08).⁹ Most of the remaining Cuyahoga County Common Pleas Judges have either denied requests for appointed counsel or not ruled upon them.

Unlike petitioners whose cases have been filed in 19 other counties and whose cases have been randomly assigned to certain Cuyahoga County Common Pleas Judges, appellant has been denied counsel merely because of his county of residence. Equal protection does not allow the denial of the critical right to counsel on such an arbitrary basis.

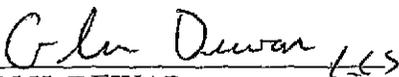
⁹ These six journal entries are attached as Exhibit B to this reply brief.

CONCLUSION

Whether or not the Adam Walsh Act is punitive, Chojnacki and other reclassified sex offenders are entitled to counsel at sex offender reclassification hearings as a matter of state statutory law and state and federal constitutional law.

Respectfully submitted,


CULLEN SWEENEY
JOHN T. MARTIN
Counsel for Amicus Curiae
Cuyahoga County Public Defender


GLEN H. DEWAR
Counsel for Amicus Curiae
Montgomery County Public Defender


PAUL SKENDELAS
Counsel for Amicus Curiae
Franklin County Public Defender


JEAN A. MADDEN
Counsel for Amicus Curiae Stark County
Public Defender


R. PAUL LAPANTE
VANASSA R. CLAPP
Counsel for Amicus Curiae
Lake County Public Defender


CARRIE L. DAVIS
JEFFREY M. GAMSO
Counsel for Amicus Curiae
ACLU of Ohio Foundation, Inc.

SERVICE

A copy of the foregoing Supplemental Reply Brief of Amici Curiae was served by ordinary mail upon Benjamin Mizer, Office of the Ohio Attorney General, 30 East Broad Street, 17th Floor, Columbus OH 43215 and Sarah M. Schregardus, Office of the Ohio Public Defender, 250 E. Broad Street, Suite 1400, Columbus OH 43215 on this 3 day of August, 2009.



CULLEN SWEENEY, ESQ.
Assistant Public Defender, Cuyahoga County

APPENDIX

EXHIBIT A



50358799

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**



CHASE RILEY
Plaintiff

Case No: CV-08-647820

Judge: BRIDGET M MCCAFFERTY

STATE OF OHIO
Defendant

JOURNAL ENTRY

88 BANKRPT/C.O.A. STAY - FINAL

BECAUSE ON 2/29/08, THIS COURT FOUND THAT PETITIONER IS NOT A TIER II SEX OFFENDER BUT RATHER A TIER I SEX OFFENDER, THE OHIO ATTORNEY GENERAL AND THE CUYAHOGA COUNTY SHERIFF SHALL CORRECT PETITIONER'S CLASSIFICATION ON ESORN AND IN ALL OF THEIR OTHER RECORDS.

Bridget McCafferty 3-6-08
Judge Signature Date

RECEIVED FOR FILING

MAR 06 2008

GERALD E. WEBST, CLERK, Dep.
By J. [Signature]



50381805

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**



JOSE ROSADO
Plaintiff

Case No: CV-08-648433

Judge: BRIDGET M MCCAFFERTY

STATE OF OHIO
Defendant

JOURNAL ENTRY

88 BANKRPT/C.O.A. STAY - FINAL

MOTION FOR PRELIMINARY INJUNCTION/TRIAL ON THE MERITS CALLED TO HEARING 3/6/08. COURT GRANTS MOTION FOR PRELIMINARY INJUNCTION INsofar AS THIS COURT SHALL STAY COMMUNITY NOTIFICATION. PETITIONER IS ORDERED TO REGISTER AS SET FORTH IN SB10. THIS COMPORTS WITH THE FEDERAL RULING OF PATRICIA ANN GAUGHN. CASE STAYED PENDING LITIGATION OF SB10, OHIO'S ADAM WALSH ACT, PROVISIONS COMING TO A COMPLETION. CASE TO RETURN TO THE ACTIVE DOCKET ONLY UPON MOTION, AFTER SAID LITIGATION IS COMPLETED. THIS COURT FINDS THAT PETITIONER IS NOT A TIER II SEX OFFENDER BUT RATHER IS A TIER I CHILD-VICTIM OFFENDER. THE OHIO ATTORNEY GENERAL AND THE CUYAHOGA COUNTY SHERIFF SHALL CORRECT PETITIONER'S CLASSIFICATION IN ALL OF THEIR RECORDS AND REMOVE HIM FROM ESORN BECAUSE HE HAS NOT COMMITTED A SEXUALLY ORIENTED OFFENSE. OSJ. FINAL.

Bridget M. McCafferty 3-7-08
Judge Signature Date

RECEIVED FOR FILING
MAR 10 2008
GERALD E. FUERT, CLERK
Deputy

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO



JOSE ROSADO	)	JUDGE BRIDGET M. McCAFFERTY
)	
Petitioner-Defendant	)	CASE NO. CV-08-648433
)	
vs.)	
)	
STATE OF OHIO	)	ORDER OF PRELIMINARY
	)	INJUNCTION/TRIAL ON MERITS
Respondent-Plaintiff)	

This cause came for the Court=s consideration on petitioner=s Motion for Preliminary Injunction / Trial on the Merits. This Court finds that implementation of Senate Bill 10 (Ohio=s Adam Walsh Act) notice provisions prior to ruling on his legal challenges to its application will cause petitioner irreparable harm. Petitioner=s Motion for a Preliminary Injunction is granted, and it is therefore:

ORDERED, that the State of Ohio and/or its agents not reclassify petitioner or implement Senate Bill 10 community notification provisions until the pending litigation is complete.

ORDERED, that copies of this Order be immediately served upon William D. Mason, Cuyahoga County Prosecutor, and/or a member of his staff, at the Justice Center, 9th Floor, 1200 Ontario Street, Cleveland, Ohio 44113; Cuyahoga County Sheriff Gerald T. McFaul, and/or a member of his staff, at 1215 West Third Street, Cleveland, Ohio 44113; and Attorney General Marc Dann, and/or a member of his staff, at 30 East Broad Street, Columbus, Ohio 43215.

FURTHER, the Court finds that no bond is necessary because the State of Ohio will suffer no monetary damages if it is finally decided that the injunction should not have been granted.

FURTHER, the petitioner shall be required, until further order of this Court, to register and comply with the statute. Further, the petitioner shall attach a copy of this Order to a file-stamped copy of the petition and furnish the same to the Sheriff within 10 business days of the date of this Order.

FURTHER, the above-referenced community notification shall not occur prior to an order of this Court.

FURTHER, pending a completion of litigation pertaining to Senate Bill 10 (Ohio's Adam Walsh Act), this case shall be stayed and removed from the active docket of this Court.

FURTHER, this case shall be returned to the active docket of this Court only upon motion, which shall not be filed prior to the completion of the above-referenced Senate Bill 10 litigation.

This Court finds that petitioner is not a Tier II Sex Offender but rather is a Tier I Child-Victim Offender. The Ohio Attorney General and the Cuyahoga County Sheriff shall correct petitioner's classification in all of their records and remove him from eSORN because he had not committed a sexually oriented offense.

IT IS SO ORDERED RECEIVED FOR FILING

MAR 10 2008

BRIDGET M. McCAFFERTY, JUDGE

GERALD T. McFAUL, CLERK
By *[Signature]* Deputy

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

VINCENT PRICE	)	JUDGE BRIDGET M. McCAFFERTY
)	
Petitioner-Defendant)	
	)	CASE NO. CV-08-646027
vs.)	
)	
STATE OF OHIO)	
	)	ORDER OF PRELIMINARY
Respondent-Plaintiff	)	INJUNCTION/TRIAL ON MERITS

This cause came for the Court's consideration on petitioner's Motion for Preliminary Injunction / Trial on the Merits. This Court finds that implementation of Senate Bill 10 (Ohio's Adam Walsh Act) notice provisions prior to ruling on his legal challenges to its application will cause petitioner irreparable harm. Petitioner's Motion for a Preliminary Injunction is granted, and it is therefore:

ORDERED, that the State of Ohio and/or its agents not reclassify petitioner or implement Senate Bill 10 community notification provisions until the pending litigation is complete.

ORDERED, that copies of this Order be immediately served upon William D. Mason, Cuyahoga County Prosecutor, and/or a member of his staff, at the Justice Center, 9th Floor, 1200 Ontario Street, Cleveland, Ohio 44113; Cuyahoga County Sheriff Gerald T. McFaul, and/or a member of his staff, at 1215 West Third Street, Cleveland, Ohio 44113; and Attorney General Marc Dann, and/or a member of his staff, at 30 East Broad Street, Columbus, Ohio 43215.

FURTHER, the Court finds that no bond is necessary because the State of Ohio will suffer no monetary damages if it is finally decided that the injunction should not have been granted.

FURTHER, the petitioner shall be required, until further order of this Court, to register and comply with the statute. Further, the petitioner shall attach a copy of this Order to a file-stamped copy of the petition and furnish the same to the Sheriff within 10 business days of the date of this Order.

FURTHER, the above-referenced community notification shall not occur prior to an order of this Court.

FURTHER, pending a completion of litigation pertaining to Senate Bill 10 (Ohio's Adam Walsh Act), this case shall be stayed and removed from the active docket of this Court.

FURTHER, this case shall be returned to the active docket of this Court only upon motion, which shall not be filed prior to the completion of the above-referenced Senate Bill 10 litigation.

The Court finds that the defendant is not a Tier III Sex Offender but rather is a Tier II Sex Offender. The Ohio Attorney General and the Cuyahoga County Sheriff shall correct petitioner's classification in eSORN and in all of their other records.

IT IS SO ORDERED.

RECEIVED FOR FILING

BRIDGET M. McCAFFERTY, JUDGE

MAR 11 2008

GERALD E. FUERST, CLERK
By *[Signature]* Deputy



51098309

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

RAYMOND GAWLOSKI
Plaintiff

STATE OF OHIO
Defendant

Case No: CV-08-653113

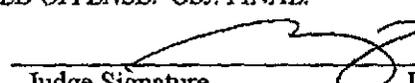
Judge: BRIDGET M MCCAFFERTY



JOURNAL ENTRY

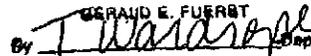
88 BANKRPT/C.O.A. STAY - FINAL

MOTION FOR PRELIMINARY INJUNCTION/TRIAL ON THE MERITS CALLED TO HEARING 4/18/08. COURT GRANTS MOTION FOR PRELIMINARY INJUNCTION INSOFAR AS THIS COURT SHALL STAY COMMUNITY NOTIFICATION. PETITIONER IS ORDERED TO REGISTER AS SET FORTH IN SB10. THIS COMPORTS WITH THE FEDERAL RULING OF PATRICIA ANN GAUGHN. CASE STAYED PENDING LITIGATION OF SB10, OHIO'S ADAM WALSH ACT, PROVISIONS COMING TO A COMPLETION. CASE TO RETURN TO THE ACTIVE DOCKET ONLY UPON MOTION, AFTER SAID LITIGATION IS COMPLETED. THIS COURT FINDS THAT PETITIONER IS NOT A TIER II SEX OFFENDER BUT RATHER IS A TIER I CHILD-VICTIM OFFENDER. THE OHIO ATTORNEY GENERAL AND THE CUYAHOGA COUNTY SHERIFF SHALL CORRECT PETITIONER'S CLASSIFICATION IN ALL OF THEIR RECORDS AND REMOVE HIM FROM ESORN BECAUSE HE HAS NOT COMMITTED A SEXUALLY ORIENTED OFFENSE. OSJ. FINAL.

 4/18/08
Judge Signature Date

RECEIVED FOR FILING

APR 21 2008

GERALD E. FUERST
By  Dep.

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

RAYMOND GAWLOSKI	)	JUDGE BRIDGET M. McCAFFERTY
)	
Petitioner-Defendant)	
	)	CASE NO. CV-08-653113
vs.)	
)	
STATE OF OHIO)	
)	
Respondent-Plaintiff	)	ORDER OF PRELIMINARY INJUNCTION/TRIAL ON MERITS

This cause came for the Court's consideration on petitioner's Motion for Preliminary Injunction / Trial on the Merits. This Court finds that implementation of Senate Bill 10 (Ohio's Adam Walsh Act) notice provisions prior to ruling on his legal challenges to its application will cause petitioner irreparable harm. Petitioner's Motion for a Preliminary Injunction is granted, and it is therefore:

ORDERED, that the State of Ohio and/or its agents not reclassify petitioner or implement Senate Bill 10 community notification provisions until the pending litigation is complete.

ORDERED, that copies of this Order be immediately served upon William D. Mason, Cuyahoga County Prosecutor, and/or a member of his staff, at the Justice Center, 9th Floor, 1200 Ontario Street, Cleveland, Ohio 44113; Cuyahoga County Sheriff Gerald T. McFaul, and/or a member of his staff, at 1215 West Third Street, Cleveland, Ohio 44113; and Attorney General Marc Dann, and/or a member of his staff, at 30 East Broad Street, Columbus, Ohio 43215.

FURTHER, the Court finds that no bond is necessary because the State of Ohio will suffer no monetary damages if it is finally decided that the injunction should not have been granted.

FURTHER, the petitioner shall be required, until further order of this Court, to register and comply with the statute. Further, the petitioner shall attach a copy of this Order to a file-stamped copy of the petition and furnish the same to the Sheriff within 10 business days of the date of this Order.

FURTHER, the above-referenced community notification shall not occur prior to an order of this Court.

FURTHER, pending a completion of litigation pertaining to Senate Bill 10 (Ohio's Adam Walsh Act), this case shall be stayed and removed from the active docket of this Court.

FURTHER, this case shall be returned to the active docket of this Court only upon motion, which shall not be filed prior to the completion of the above-referenced Senate Bill 10 litigation.

This Court finds that petitioner is not a Tier II Sex Offender but rather is a Tier I Child-Victim Offender. The Ohio Attorney General and the Cuyahoga County Sheriff shall correct petitioner's classification in all of their records and remove him from eSORN because he had not committed a sexually oriented offense.

IT IS SO ORDERED. **RECEIVED FOR FILING**

APR 21 2008

BRIDGET M. McCAFFERTY JUDGE

GERALD E. FUERTT
By T. Wardrobe DSG.



51254299



**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

DALE FUNTASH
Plaintiff

Case No: CV-08-646795

Judge: SHIRLEY STRICKLAND SAFFOLD



STATE OF OHIO
Defendant

JOURNAL ENTRY

89 DIS. W/ PREJ - FINAL

PETITIONER FILED A PETITION TO CONTEST APPLICATION OF THE ADAM WALSH ACT ON 1-10-08. IN PETITIONER'S BRIEF IN SUPPORT OF PETITION TO CONTEST APPLICATION OF THE ADAM WALSH ACT (FILED 4-2-08) HE WITHDREW ALL CONSTITUTIONAL ARGUMENTS AND ARGUED ONLY THAT HE WAS MISCLASSIFIED. THE PARTIES SETTLED THIS ISSUE BY STIPULATION AT THE HEARING HELD ON 4-23-08. PETITIONER SHALL BE CLASSIFIED AS A TIER 1 SEX OFFENDER.

ORDERED, THAT COPIES OF THIS ORDER BE IMMEDIATELY SERVED UPON WILLIAM D. MASON, CUYAHOGA COUNTY PROSECUTOR, AND/OR A MEMBER OF HIS STAFF, AT THE JUSTICE CENTER, 9TH FLOOR, 1200 ONTARIO STREET, CLEVELAND, OHIO 44113; CUYAHOGA COUNTY SHERIFF GERALD T. MCFAUL, AND/OR A MEMBER OF HIS STAFF, AT 1215 WEST THIRD STREET, CLEVELAND, OHIO 44113; AND ATTORNEY GENERAL MARC DANN, AND/OR A MEMBER OF HIS STAFF, AT 30 EAST BROAD STREET, COLUMBUS, OHIO 43215.

COURT COST ASSESSED AS EACH THEIR OWN.

[Handwritten Signature]

Judge Signature

5/2/08

Date

RECEIVED FOR FILING

MAY 05 2008

BY *[Handwritten Signature]*
GERALD E. FUERST, CLERK
LSD



51255056



**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

DWAYNE O. ORR
Plaintiff

STATE OF OHIO
Defendant

Case No: CV-08-647701

Judge: SHIRLEY STRICKLAND SAFFOLD

JOURNAL ENTRY

PETITIONER FILED A PETITION TO CONTEST RECLASSIFICATION ON 1-17-08. A HEARING WAS HELD ON 4-23-08. THE PARTIES STIPULATED THAT PETITIONER SHALL BE CLASSIFIED AS A TIER 1 SEX OFFENDER.

ORDERED, THAT COPIES OF THIS ORDER BE IMMEDIATELY SERVED UPON WILLIAM D. MASON, CUYAHOGA COUNTY PROSECUTOR, AND/OR A MEMBER OF HIS STAFF, AT THE JUSTICE CENTER, 9TH FLOOR, 1200 ONTARIO STREET, CLEVELAND, OHIO 44113; CUYAHOGA COUNTY SHERIFF GERALD T. MCFAUL, AND/OR A MEMBER OF HIS STAFF, AT 1215 WEST THIRD STREET, CLEVELAND, OHIO 44113; AND ATTORNEY GENERAL MARC DANN, AND/OR A MEMBER OF HIS STAFF, AT 30 EAST BROAD STREET, COLUMBUS, OHIO 43215.

Shirley Strickland Saffold 5/2/08

Judge Signature Date

RECEIVED FOR FILING

MAY 05 2008

By *G. Ernest* GERALD E. ERNST, CLERK Dep.

e

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

WILLIAM SCHIEWE
Petitioner-Defendant

-vs-

STATE OF OHIO
Respondent-Plaintiff

JUDGE DAVID T. MATIA

CASE NO. CV-08-646037

JOURNAL ENTRY

Petition to Contest Application of the Adam Walsh Act (Senate Bill 10) is granted in part and stayed in part.

The petition is granted with respect to petitioner's claim that he has been misclassified as a Tier III Sex Offender under the AWA. This Court finds that petitioner is not a Tier III Sex Offender but rather is a Tier II Sex Offender. The Ohio Attorney General and the Cuyahoga County Sheriff shall correct petitioner's classification in eSORN and in all of their other records.

This Court stays its ruling on all of petitioner's remaining claims pending litigation of SB 10 coming to a completion. Case to return to the active docket only upon motion, after said litigation is completed.

Copies of this order shall be immediately served upon Cuyahoga County Sheriff Gerald T. McFaul, and/or a member of his staff, at 1215 West Third Street, Cleveland, Ohio 44113; and Attorney General Marc Dann, 30 East Broad Street, Columbus, OH 43215, and/or a member of his staff.

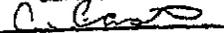


Judge David T. Matia
Cuyahoga County Common Pleas

RECEIVED FOR FILING

MAY 09 2008

GERALD E. FUERST

By  Dep.



Pamela Bottom

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CIVIL DIVISION



MARK PATRICK, aka TALIESIN,	)	CASE NO. CV 08 648826
)	
Petitioner,	)	JUDGE DICK AMBROSE
)	
-vs-)	
)	
STATE OF OHIO,	)	<u>JOURNAL ENTRY</u>
)	
Repsondent.)	

By agreement of the parties, and for good cause shown, it is hearby ordered that the above-named Petitioner is not subject to the registration requirements of Ohio R.C. 2950.01 et seq. It is further ordered that the above-named Petitioner is to be removed from all sex offender and child-victim registries maintained by or on behalf of the State of Ohio including but not limited eSORN.

Petitioner was convicted of kidnapping in violation of 18 U.S.C. Sect. 1201(a) in the United States District Court for the Northern District of Ohio on January 24, 1990. Petitioner's conviction was affirmed by the United States Court of Appeals for the Sixth Circuit on June 5, 1991, and is reported at *United States v. Patrick*, 935 F.2d 758 (6th Cir. 1991).

Petitioner was subject to five-years of conditional release upon release from prison. At that time, Petitioner was ordered to register as a sexually oriented offender by his probation officer, and Petitioner complied.

Petitioner, however, was not required by law to register as a sexually oriented offender. In *Small, Gooden, Reine, and Washington*, infra, the defendants/appellants, were classified as sexually oriented offenders for kidnapping a minor notwithstanding the complete absence of evidence of a sexual motivation. *State v. Small*, Franklin App. No. 04-AP-316, 2005 Ohio 3813,

at ¶¶ 19, 29, 33; *State v. Gooden*, Cuyahoga App. No. 82861, 2004 Ohio 2699, at ¶¶ 64-67; *State v. Reine*, Montgomery App. No. 19157, 2003 Ohio 50, at ¶ 4; *State v. Washington*, Lake App. No. 99-L-015, 2001 Ohio 8905, *3, 12-14. All four courts struck down such classifications, holding that, absent evidence of sexual motivation, there is no rational basis for categorizing the kidnapping of a minor as a sexually oriented offense. *Small*, 2005 Ohio 3813, at ¶ 29; *Gooden*, 2004 Ohio 2699, at ¶¶ 64-67; *Reine*, 2003 Ohio 50, at ¶¶ 19-24; *Washington*, 2001 Ohio 8905, at *12-14. Based on these four cases and their progeny, Petitioner was not lawfully subject to reporting as a sexually oriented offender.

Because Petitioner was not lawfully required to register as a sexually oriented offender when Ohio's Adam Walsh Act went into effect, Petitioner may not be classified under Ohio's Adam Walsh Act.

It is further ordered that any remaining issues presented in the instant Petition are hereby dismissed.

It is further ordered that copies of this order be immediately served upon William D. Mason, Cuyahoga County Prosecutor, and/or a member of his staff, at the Justice Center, 9th floor, 1200 Ontario Street, Cleveland, Ohio 44113; Gerald T. McFaul, and/or a member of his staff, at 1215 West Third Street, Cleveland, Ohio 44113; and Marc Dann, Ohio Attorney General, and/or a member of his staff, at 30 East Broad Street, Columbus, Ohio 43215.

Court costs assessed as each their own.

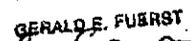


DICK AMBROSE, JUDGE

RECEIVED FOR FILING

MAY 20 2008

GERALD E. FURST

By  Dep.

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ANTONIO PENA
Petitioner-Defendant

-vs-

STATE OF OHIO
Respondent-Plaintiff

JUDGE STEVEN J. TERRY

CASE NO. CV-08-649201

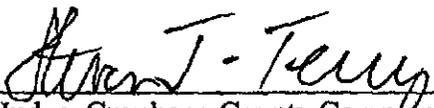
JOURNAL ENTRY

By agreement of the parties, and for good cause shown, Petition to Contest Application of the Adam Walsh Act (Senate Bill 10) is granted in part and stayed in part.

The petition is granted with respect to petitioner's claim that he has been misclassified as a Tier III Sex Offender under the AWA. This Court finds that petitioner is not a Tier III Sex Offender but rather is a Tier II Sex Offender. The Ohio Attorney General and the Cuyahoga County Sheriff shall correct petitioner's classification in eSORN and in all of their other records.

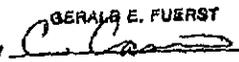
This Court stays its ruling on all of petitioner's remaining claims pending litigation of SB 10 coming to a completion. Case to return to the active docket only upon motion, after said litigation is completed.

Copies of this order shall be immediately served upon Cuyahoga County Sheriff Gerald T. McFaul, and/or a member of his staff, at 1215 West Third Street, Cleveland, Ohio 44113; and Attorney General Marc Dann, 30 East Broad Street, Columbus, OH 43215, and/or a member of his staff.


Judge, Cuyahoga County Common Pleas

RECEIVED FOR FILING

JUL 09 2008

GERALD E. FUERST
By  Dep.

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CRIMINAL DIVISION

[Handwritten mark]

STATE OF OHIO

CASE NO. 368252

Plaintiff,

JUDGE MICHAEL CORRIGAN

vs.

FREDRICK SULLIVAN

ORDER

Defendant.

It is hereby ordered that Defendant's classification as a sexually oriented offender is vacated and all duties and obligations under Ohio Revised Code Chapter 2950 relieved.

8-4-08

DATE

[Signature]

JUDGE, COURT OF COMMON PLEAS

FILED
2008 AUG -4 A 10:44
RALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY





53416477

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

JAMES BARNWELL
Plaintiff

STATE OF OHIO
Defendant

Case No: CV-08-648810

Judge: JOHN P O'DONNELL

JOURNAL ENTRY

CASE CALLED FOR HEARING 9/5/08. PETITIONER AND COUNSEL CULLEN SWEENEY PRESENT. ASSISTANT PROSECUTOR PAM BOLTON PRESENT. COURT REPORTER TOM WALTERS PRESENT.

THE PARTIES STIPULATE THAT THE SENTENCE IN THE CASE THAT FORMED THE BASIS FOR THE PETITIONER'S ORIGINAL REGISTRATION DUTIES - STATE V. JAMES BARNWELL, CR 441920 - HAS BEEN VACATED. THEREFORE, THERE IS NO CONVICTION THERE TO ALLOW FOR THE PETITIONER TO HAVE BEEN ADJUDICATED A SEXUALLY ORIENTED OFFENDER, HABITUAL SEX OFFENDER OR SEXUAL PREDATOR. WITHOUT AN ORIGINAL CLASSIFICATION THE PETITIONER CANNOT BE "RE-CLASSIFIED" UNDER THE ADAM WALSH ACT, NOR CAN HE BE NEWLY CLASSIFIED AS A TIER I, II OR III SEX OFFENDER. BECAUSE THE PETITIONER IS NOT, AND CANNOT BE, CLASSIFIED AS A SEX OFFENDER HIS PETITION IS DISMISSED AS NOT JUSTICIABLE. COURT COST ASSESSED AS EACH THEIR OWN.

Judge Signature

09/05/2008

09/05/2008

RECEIVED FOR FILING
09/08/2008 09:56:26
By: CLTMP
GERALD E. FUERST, CLERK

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

JAMES DANIELS
Petitioner-Defendant

-vs-

STATE OF OHIO
Respondent-Plaintiff

JUDGE STEVEN J. TERRY

CASE NO. CV-08-648436

JOURNAL ENTRY



This case was called to a hearing on June 30, 2008.

This Court, over the State's objection, grants petitioner's Petition to Contest Application of the Adam Walsh Act (Senate Bill 10) and finds that petitioner cannot be classified as a sex offender under Ohio's Adam Walsh Act and is not subject to its provisions.

Petitioner was convicted of Indecency with a Child by Contact in 1988 in Texas. On May 11, 1998, a Texas Judicial Court judge discharged petitioner from community supervision and ordered that his conviction be "set aside," that the indictment be dismissed, and that petitioner be "released from all penalties and disabilities resulting from the crime." Because petitioner's conviction was "set aside" in 1998, petitioner does not have a sex offense to trigger the obligations of the Adam Walsh Act. Moreover, because, as acknowledged by both parties, petitioner's obligations under Texas' sex offender law would have expired prior to the date of this hearing, it is fundamentally unfair to subject petitioner to further obligations merely because he moved to Ohio.

It is hereby ordered that petitioner is not a sex offender under the Adam Walsh Act and is not subject to any of the provisions of Chapter 2950. It is further ordered that the petitioner be removed from all sex offender registries maintained by or on behalf of the State of Ohio including, but not limited to, eSORN.

Copies of this order shall be immediately served upon Cuyahoga County Sheriff Gerald T. McFaul, and/or a member of his staff, at 1215 West Third Street, Cleveland, Ohio 44113; and Attorney General Marc Dann, 30 East Broad Street, Columbus, OH 43215, and/or a member of his staff.

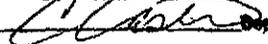


Judge, Cuyahoga County Common Pleas

RECEIVED FOR FILING

SEP 17 2008

GERALD E. FURBY

By 



53636654

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

PRESTON LAMPKIN
Plaintiff

Case No: CV-08-648856

Judge: JOHN P O'DONNELL

STATE OF OHIO
Defendant

JOURNAL ENTRY

96 DISP.OTHER - FINAL

CASE CALLED FOR HEARING 9/19/08. PETITIONER AND PUBLIC DEFENDER CULLEN SWEENEY PRESENT.
ASSISTANT COUNTY PROSECUTOR PAM BOLTON PRESENT.

THE CLAIMS OF THE UNCONSTITUTIONALITY OF OHIO'S ADAM WALSH ACT RAISED IN THE PETITION ARE NOT WELL TAKEN. THE COURT FINDS THE RELEVANT STATUTES TO BE CONSTITUTIONAL. FOR REASONING, SEE THIS COURT'S 7-16-08 JOURNAL ENTRY IN THE CASE OF DIONTE GOSS V. STATE OF OHIO, CV 08 646052.

THE PETITION ASSERTS A CLAIM THAT THE PETITIONER HAS BEEN MISCLASSIFIED AS A TIER III OFFENDER WHEN HE SHOULD HAVE BEEN CLASSIFIED AS A TIER I SEX OFFENDER. THE UNDERLYING CONVICTION WAS FOR GROSS SEXUAL IMPOSITION WITH A VICTIM OVER AGE 13 (O.R.C. 2907.05). UNDER O.R.C. 2950.01(E)(1)(C), GSI WITH A VICTIM OVER 13 IS A TIER I OFFENSE. THEREFORE, THE COURT FINDS THAT PETITIONER HAS BEEN MISCLASSIFIED AND IS NOT A TIER III SEX OFFENDER BUT RATHER IS A TIER I SEX OFFENDER.

THE PETITION ALSO ASSERTS A CLAIM THAT THE COMMUNITY NOTIFICATION PROVISIONS OF 2950.11 DO NOT APPLY TO THE PETITIONER. UNDER O.R.C. 2950.11(F)(1), COMMUNITY NOTIFICATION DOES NOT APPLY TO A TIER I OFFENDER. THEREFORE, THE COURT HAVING FOUND THAT THE PETITIONER IS PROPERLY CLASSIFIED AS A TIER I SEX OFFENDER, THE COURT FURTHER FINDS THAT THE PETITIONER IS NOT SUBJECT TO THE COMMUNITY NOTIFICATION PROVISIONS OF O.R.C. 2950.11 ET SEQ.

THE OHIO ATTORNEY GENERAL AND THE CUYAHOGA COUNTY SHERIFF ARE HEREBY ORDERED TO CORRECT PETITIONER'S CLASSIFICATION IN ESORN AND IN ALL OF THEIR OTHER RECORDS.

COPIES OF THIS ORDER SHALL BE IMMEDIATELY SERVED UPON CUYAHOGA COUNTY SHERIFF GERALD T. MCFAUL, AND/OR A MEMBER OF HIS STAFF, AT 1215 WEST THIRD STREET, CLEVELAND, OHIO 44113; AND ATTORNEY GENERAL NANCY ROGERS, 30 EAST BROAD STREET, COLUMBUS, OH 43215, AND/OR A MEMBER OF HER STAFF.

COURT COST ASSESSED TO THE PLAINTIFF(S).

Judge Signature

09/19/2008

- 96
09/19/2008

RECEIVED FOR FILING
09/19/2008 15:36:40
By: CLTMP
GERALD E. FUERST, CLERK



53636183

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

JUSTIN E RAY
Plaintiff

STATE OF OHIO
Defendant

Case No: CV-08-649119

Judge: JOHN P O'DONNELL

JOURNAL ENTRY

CASE CALLED FOR HEARING 9/18/08. PETITIONER AND COUNSEL CULLEN SWEENEY PRESENT. ASSISTANT COUNTY PROSECUTOR ALLEN REGAS PRESENT.

THE CLAIMS OF THE UNCONSTITUTIONALITY OF OHIO'S ADAM WALSH ACT RAISED IN THE PETITION ARE NOT WELL-TAKEN. THE COURT FINDS THE RELEVANT STATUTES TO BE CONSTITUTIONAL. FOR REASONING, SEE THIS COURT'S 7-16-08 JOURNAL ENTRY IN THE CASE OF DIONTE GOSS V. STATE OF OHIO, CV 08 646052.

THE PETITION ASSERTS A CLAIM PURSUANT TO O.R.C. 2950.031(E) THAT THE PETITIONER WAS MISCLASSIFIED BY THE ATTORNEY GENERAL UNDER THE TIER CLASSIFICATION SYSTEM OF THE ADAM WALSH ACT. HE HAS BEEN CLASSIFIED AS A TIER II OFFENDER BASED UPON A CONVICTION IN A CALIFORNIA COURT. HOWEVER, UPON REVIEW BY THE COURT AND ALL COUNSEL, IT IS AGREED THAT THE CALIFORNIA STATUTORY OFFENSE WAS MOST SIMILAR TO AN OHIO TIER I OFFENSE [O.R.C. 2907.323(A)(3)]. HENCE, THE PETITIONER'S CLAIM THAT HE HAS BEEN MISCLASSIFIED IS WELL TAKEN. THE COURT FINDS THAT PETITIONER IS NOT A TIER II SEX OFFENDER BUT IS A TIER I SEX OFFENDER. THE OHIO ATTORNEY GENERAL AND THE CUYAHOGA COUNTY SHERIFF ARE ORDERED TO CORRECT PETITIONER'S CLASSIFICATION IN ESORN AND IN ALL OF THEIR OTHER RECORDS.

COPIES OF THIS ORDER SHALL BE IMMEDIATELY SERVED UPON CUYAHOGA COUNTY SHERIFF GERALD T. MCFAUL, AND/OR A MEMBER OF HIS STAFF, AT 1215 WEST THIRD STREET, CLEVELAND, OHIO 44113; AND ATTORNEY GENERAL NANCY ROGERS, 30 EAST BROAD STREET, COLUMBUS, OH 43215, AND/OR A MEMBER OF HER STAFF.

COURT COST ASSESSED TO THE PLAINTIFF(S).

Judge Signature

09/19/2008

09/19/2008

RECEIVED FOR FILING
09/19/2008 15:29:04
By: CLTMP
GERALD E. FUERST, CLERK



56220252

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

JUSTIN E RAY
Plaintiff

STATE OF OHIO
Defendant

Case No: CV-08-649119

Judge: JOHN P O'DONNELL

JOURNAL ENTRY

OVER THE OBJECTION OF THE DEFENDANT STATE OF OHIO, PLAINTIFF JUSTIN E. RAY'S MOTION FOR RELIEF FROM JUDGMENT (CULLEN SWEENEY 0077187, FILED 12/24/2008) IS GRANTED. THE JUDGMENT ENTRY OF 9/19/08 IS HEREBY VACATED AND JUDGMENT ON THE COMPLAINT (THE PETITION) IS HEREBY ENTERED IN THE PLAINTIFF'S (PETITIONER'S) FAVOR ON THE PERSUASIVE AUTHORITY OF STATE OF OHIO V. BRIAN COOK, 2008-OHIO-6543, 2D DISTRICT APP. NO. 2008 CA 19.

Judge Signature

03/02/2009

03/02/2009

RECEIVED FOR FILING
03/02/2009 09:51:16
By: CLTMP
GERALD E. FUERST, CLERK

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

TYRUS KENNEY
Petitioner-Defendant

-vs-

STATE OF OHIO
Respondent-Plaintiff

CASE NO. CV-08-648483

JUDGE NANCY MARGARET RUSSO

Stipulated
JOURNAL ENTRY

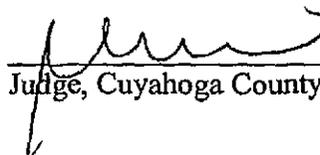
F

Petition to Contest Application of the Adam Walsh Act (Senate Bill 10) is granted in part and stayed in part.

The petition is granted with respect to petitioner's claim that he has been misclassified as a Tier III Sex Offender under the AWA. ^{The parties stipulate} that petitioner is not a Tier III Sex Offender but rather is a Tier II Sex Offender. The Ohio Attorney General and the Cuyahoga County Sheriff shall correct petitioner's classification in eSORN and in all of their other records.

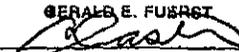
This Court stays its ruling on all of petitioner's remaining claims pending litigation of SB 10 coming to a completion. Case to return to the active docket only upon motion, after said litigation is completed.

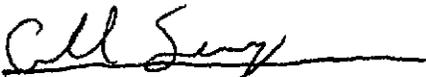
Copies of this order shall be immediately served upon Cuyahoga County Sheriff Gerald T. McFaul, and/or a member of his staff, at 1215 West Third Street, Cleveland, Ohio 44113; and Attorney General Nancy Rogers, 30 East Broad Street, Columbus, OH 43215, and/or a member of his staff.


Judge, Cuyahoga County Common Pleas

RECEIVED FOR FILING

SEP 26 2008

GERALD E. FURST
By  Dep.


Attorney for Petitioner


Attorney for Respondent



53760845

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**



JOSHUA WATT
Plaintiff

Case No: CV-08-647885

Judge: KATHLEEN ANN SUTULA

STATE OF OHIO
Defendant

JOURNAL ENTRY

PETITIONER'S MOTION TO CORRECT AWA CLASSIFICATION, FILED ON 4/10/2008, IS UNOPPOSED AND GRANTED. THE COURT FINDS THAT PETITIONER HAS BEEN MISCLASSIFIED AS A TIER III SEX OFFENDER. PURSUANT TO OHIO REVISED CODE SECTION 2950.01(E)(1)(C), PETITIONER IS A TIER I SEX OFFENDER. THE STATE OF OHIO AND ITS AGENTS, INCLUDING BUT NOT LIMITED TO THE CUYAHOGA COUNTY SHERIFF AND THE OHIO ATTORNEY GENERAL, SHALL IMMEDIATELY UPDATE ALL OF THEIR RECORDS AND PUBLICATIONS TO REFLECT THAT JOSHUA WATT IS A TIER I SEX OFFENDER AND NOT A TIER III SEX OFFENDER.

THE CLERK IS ORDERED TO IMMEDIATELY SERVE A COPY OF THIS ORDER UPON: (1) CUYAHOGA COUNTY PROSECUTOR WILLIAM D. MASON, AND/OR A MEMBER OF HIS STAFF, AT THE JUSTICE CENTER, 1200 ONTARIO ST., CLEVELAND, OH 44113; (2) CUYAHOGA COUNTY SHERIFF GERALD T. MCFAUL, AND/OR A MEMBER OF HIS STAFF, AT 1215 WEST THIRD ST., CLEVELAND, OH 44113; (3) OHIO ATTORNEY GENERAL NANCY H. ROGERS, AND/OR A MEMBER OF HER STAFF, AT 30 EAST BROAD ST., COLUMBUS, OH 43215; AND (4) THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION, AT P.O. BOX 365, LONDON, OH 43140.

K.A. Sutula 9.29.08
Judge Signature Date

RECEIVED FOR FILING

SEP 29 2008

By Gerald T. McFaul CLERK Dep.

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

WILLIAM MOTLEY
Petitioner-Defendant

-vs-

STATE OF OHIO
Respondent-Plaintiff

JUDGE TIMOTHY E. MCMONAGLE

CASE NO. CV-08-650327

JOURNAL ENTRY

F

Petition to Contest Application of the Adam Walsh Act (Senate Bill 10) is granted.

By agreement of the parties, and for good cause shown, it is hereby ordered that the above-named Petitioner is not subject to any of the requirements of Ohio R.C. 2950.01 et seq. It is further ordered that the above-named Petitioner is to be removed from all sex offender and child-victim registries maintained by or on behalf of the State of Ohio including but not limited eSORN.

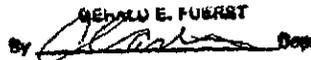
Petitioner was previously convicted of abduction of an individual over the age of 18. Petitioner's abduction conviction is not a sexually oriented offense or child-victim oriented offense as defined by the Adam Walsh Act. This Court therefore finds that Petitioner is not a sex offender or child-victim oriented offender and has no duties pursuant to Chapter 2950 of the Ohio Revised Code.

Copies of this order shall be immediately served upon Cuyahoga County Sheriff Gerald T. McFaul, and/or a member of his staff, at 1215 West Third Street, Cleveland, Ohio 44113; and Attorney General Nancy Rogers, 30 East Broad Street, Columbus, OH 43215, and/or a member of his staff.


Judge, Cuyahoga County Common Pleas

RECEIVED FOR FILING

OCT 09 2008

RENEAL E. FUERST
By  Dep.

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CHRISTOPHER HARDNETT
Petitioner-Defendant

-vs-

STATE OF OHIO
Respondent-Plaintiff

CASE NO. CV-08-648170

JUDGE KATHLEEN ANN SUTULA

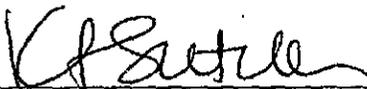
AGREED JUDGMENT ENTRY



Petition to Contest Application of the Adam Walsh Act (Senate Bill 10) is granted.

This Court finds, by agreement of the parties and for good cause shown, that Petitioner Christopher Hardnett has never been convicted of a sexually oriented or child-victim oriented offense. It is hereby ordered that petitioner is not subject to any of the requirements of and has no duties pursuant to Chapter 2950 of the Ohio Revised Code. It is further ordered that the above-named Petitioner is to be removed from all sex offender and child-victim registries maintained by, or on behalf of, the State of Ohio including, but not limited to, eSORN.

Copies of this order shall be immediately served upon Cuyahoga County Sheriff Gerald T. McFaul, and/or a member of his staff, at 1215 West Third Street, Cleveland, Ohio 44113; and Attorney General Nancy Rogers, 30 East Broad Street, Columbus, OH 43215, and/or a member of his staff.

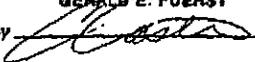


Judge, Cuyahoga County Common Pleas

RECEIVED FOR FILING

OCT 16 2008

GERALD E. FURST

By  Dep.

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CIVIL DIVISION

MILTON GOODWIN,)
)
 Petitioner,) CASE NO. CV 08-665225
)
 -vs-) JUDGE RONALD SUSTER
)
 STATE OF OHIO,) JOURNAL ENTRY
)
 Respondent.)



By agreement of the parties, and for good cause shown, it is hereby ordered that petitioner is not subject to any of the requirements of and has no duties pursuant to Chapter 2950 of the Ohio Revised Code. It is further ordered that the above-named Petitioner is to be removed from all sex offender and child-victim registries maintained by, or on behalf of, the State of Ohio including, but not limited to, eSORN.

Although petitioner was previously convicted of attempted rape and sexual battery in 1985, he was released from prison prior to the enactment of Ohio's Megan's Law. Therefore, he did not have a legal duty to register as a sex offender under Ohio's Megan's Law. Ohio's new sex offender law ("Senate Bill 10" or the "Adam Walsh Act") only purports to apply retroactively to those individuals who had a continuing legal duty to register under the prior law (i.e. Ohio's Megan's Law) as of July 1, 2007 or to those convicted for the first time on or after July 2, 2007. R.C. 2950.031; R.C. 2950.032; and R.C. 2950.033. Because petitioner did not have a duty to register under the prior law, he cannot be required to register as a sex offender under the Adam Walsh Act.

It is further ordered that any remaining issues presented in the instant Petition are hereby dismissed.

55046646
CV08665225



\$

It is further ordered that copies of this order be immediately served upon William D. Mason, Cuyahoga County Prosecutor, and/or a member of his staff, at the Justice Center, 9th floor, 1200 Ontario Street, Cleveland, Ohio 44113; Gerald T. McFaul, and/or a member of his staff, at 1215 West Third Street, Cleveland, Ohio 44113; and Nancy Rogers, Ohio Attorney General, and/or a member of his staff, at 30 East Broad Street, Columbus, Ohio 43215.

Court costs assessed as each their own.

 12-11-08
RONALD SUSTER, JUDGE

RECEIVED FOR FILING

DEC 12 2008

GERALD E. FUENST

By  Dep.



55026179

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

BRADY FINKLEA
Plaintiff

STATE OF OHIO
Defendant

Case No: CV-08-667460

Judge: BRIDGET M MCCAFFERTY



JOURNAL ENTRY

89 DIS. W/ PREJ - FINAL

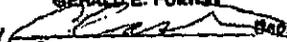
HEARING HELD ON MOTION FOR PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION. PURSUANT TO THE ORDER OF THE TRIAL COURT, JUDGE THOMAS POKORNY IN CR232766 ON JANUARY 7, 1998, BRADY FINKLEA, PLAINTIFF HEREIN, HAS NO DUTY TO REGISTER OR COMPLY WITH THE REQUIREMENTS OF CHAPTER 2950, AS AMENDED BY S.B. 10. THEREFORE, THIS COURT GRANTS COUNT EIGHT OF HIS PETITION CONTESTING THE APPLICATION OF THE ADAM WALSH ACT. THE REMAINING COUNTS THEREIN ARE RENDERED MOOT. COURT COST ASSESSED AS EACH THEIR OWN.



Judge Signature Date

RECEIVED FOR FILING

DEC 15 2008

GERALD E. FUERST
By  8423



56328147

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

REGINALD L. MAHOME
Plaintiff

Case No: CV-08-661140

Judge: JANET R BURNSIDE

STATE OF OHIO
Defendant

JOURNAL ENTRY

PETITION TO CONTEST APPLICATION OF THE ADAM WALSH ACT (SENATE BILL 10) IS GRANTED IN PART, OVER THE STATE'S OBJECTION.

UPON FINDING THAT THERE IS NO JUST REASON FOR DELAY, THE PETITION IS GRANTED WITH RESPECT TO PETITIONER'S CLAIM THAT HE HAS BEEN MISCLASSIFIED AS A TIER II SEX OFFENDER UNDER THE AWA. THIS COURT FINDS, PURSUANT TO R.C. 2950.01(F)(5)(A) AND 2950.031(E), THAT PETITIONER IS NOT A TIER II SEX OFFENDER BUT RATHER IS A TIER I SEX OFFENDER. THE OHIO ATTORNEY GENERAL AND THE CUYAHOGA COUNTY SHERIFF SHALL CORRECT PETITIONER'S CLASSIFICATION IN ESORN AND IN ALL OF THEIR OTHER RECORDS.

COPIES OF THIS ORDER SHALL BE IMMEDIATELY SERVED BY THE CLERK OF COURTS UPON CUYAHOGA COUNTY SHERIFF GERALD T. MCFaul, AND/OR A MEMBER OF HIS STAFF, AT 1215 WEST THIRD STREET, CLEVELAND, OHIO 44113; ATTORNEY GENERAL RICHARD CORDRAY, 30 EAST BROAD STREET, COLUMBUS, OH 43215, AND/OR A MEMBER OF HIS STAFF; CUYAHOGA COUNTY PROSECUTING ATTORNEY, C/O PAMELA BOLTON, 1200 ONTARIO STREET, 9TH FLOOR, CLEVELAND, OHIO 44113; AND CUYAHOGA COUNTY PUBLIC DEFENDER, C/O CULLEN SWEENEY, 310 LAKESIDE AVENUE, SUITE 400, CLEVELAND, OHIO 44113.

Judge Signature

03/06/2009

03/06/2009

RECEIVED FOR FILING
03/09/2009 09:10:18
By: CLPAL
GERALD E. FUERST, CLERK



56328101

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

CHIPALA LIPTS
Plaintiff

STATE OF OHIO
Defendant

Case No: CV-08-664212

Judge: JANET R BURNSIDE

JOURNAL ENTRY

96 DISP.OTHER - FINAL

PETITION TO CONTEST APPLICATION OF THE ADAM WALSH ACT (SENATE BILL 10) IS GRANTED.

THIS COURT FINDS, BY AGREEMENT OF THE PARTIES AND FOR GOOD CAUSE SHOWN, THAT PETITIONER CHIPALA LIPTS HAS NEVER BEEN CONVICTED OF A SEXUALLY ORIENTED OR CHILD-VICTIM ORIENTED OFFENSE. IT IS HEREBY ORDERED THAT PETITIONER IS NOT SUBJECT TO ANY OF THE REQUIREMENTS OF AND HAS NO DUTIES PURSUANT TO CHAPTER 2950 OF THE OHIO REVISED CODE. IT IS FURTHER ORDERED THAT THE ABOVE-NAMED PETITIONER IS TO BE REMOVED FROM ALL SEX OFFENDER REGISTRIES MAINTAINED BY, OR ON BEHALF OF, THE STATE OF OHIO INCLUDING, BUT NOT LIMITED TO, ESORN.

COPIES OF THIS ORDER SHALL BE IMMEDIATELY SERVED BY THE CLERK OF COURTS UPON CUYAHOGA COUNTY SHERIFF GERALD T. MCFAUL, AND/OR A MEMBER OF HIS STAFF, AT 1215 WEST THIRD STREET, CLEVELAND, OHIO 44113; ATTORNEY GENERAL RICHARD CORDRAY, 30 EAST BROAD STREET, COLUMBUS, OH 43215, AND/OR A MEMBER OF HIS STAFF; CUYAHOGA COUNTY PROSECUTING ATTORNEY, C/O PAMELA BOLTON, 1200 ONTARIO STREET, 9TH FLOOR, CLEVELAND, OHIO 44113; AND CUYAHOGA COUNTY PUBLIC DEFENDER, C/O CULLEN SWEENEY, 310 LAKESIDE AVENUE, SUITE 400, CLEVELAND, OHIO 44113.

COURT COST ASSESSED AS DIRECTED.

Judge Signature

03/06/2009

- 96
03/06/2009

RECEIVED FOR FILING
03/09/2009 09:10:13
By: CLPAL
GERALD E. FUERST, CLERK

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

JUSTO L. PRATTS
Petitioner-Defendant

-vs-

STATE OF OHIO
Respondent-Plaintiff

JUDGE TIMOTHY E. MCMONAGLE

CASE NO. CV-08-647222

JOURNAL ENTRY

Trial on the merits called to hearing on 7-14-08.

Petition to Contest Application of the Adam Walsh Act (Senate Bill 10) is granted in part.

The petition is granted with respect to petitioner's claim that he has been misclassified as a Tier III Sex Offender under the AWA. This Court finds that petitioner is not a Tier III Sex Offender but rather is a Tier I Sex Offender. The Ohio Attorney General and the Cuyahoga County Sheriff shall correct petitioner's classification in eSORN and in all of their other records.

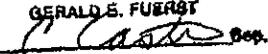
Petitioner's remaining claims in his petition will be addressed by a subsequent order.

Copies of this order shall be immediately served upon Cuyahoga County Sheriff Gerald T. McFaul, and/or a member of his staff, at 1215 West Third Street, Cleveland, Ohio 44113; and Attorney General Marc Dann, 30 East Broad Street, Columbus, OH 43215, and/or a member of his staff.


Judge, Cuyahoga County Common Pleas

RECEIVED FOR FILING

JUL 15 2008

GERALD E. FUERST
By  Dep.

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

PAUL M. GERACE
Petitioner-Defendant

-vs-

STATE OF OHIO
Respondent-Plaintiff

JUDGE TIMOTHY E. MCMONAGLE

CASE NO. CV-08-648168

JOURNAL ENTRY

Petition to Contest Application of the Adam Walsh Act (Senate Bill 10) is granted in part, over the State's objection.

The petition is granted with respect to Petitioner's claim that he has been misclassified as a Tier III Sex Offender under the AWA. This Court finds, pursuant to R.C. 2950.01(G)(5)(a) and 2950.031(E), that Petitioner is not a Tier III Sex Offender but rather is a Tier II Sex Offender. The Ohio Attorney General and the Cuyahoga County Sheriff shall correct Petitioner's classification in eSORN and in all of their other records.

Copies of this order shall be immediately served upon Cuyahoga County Sheriff Gerald T. McFaul, and/or a member of his staff, at 1215 West Third Street, Cleveland, Ohio 44113; and Attorney General Nancy Rogers, 30 East Broad Street, Columbus, OH 43215, and/or a member of his staff.

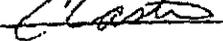


Judge, Cuyahoga County Common Pleas

RECEIVED FOR FILING

OCT 02 2008

GERALD E. FUERST

By  Dep.

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

JOHN GRACEFFO
Petitioner-Defendant

-vs-

STATE OF OHIO
Respondent-Plaintiff

JUDGE TIMOTHY E. MCMONAGLE

CASE NO. CV-08-653116

JOURNAL ENTRY

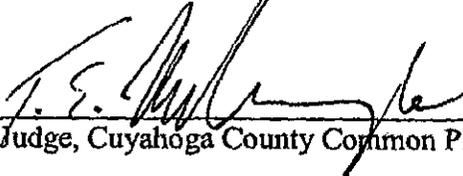
Trial on the merits called to hearing on 7-14-08.

Petition to Contest Application of the Adam Walsh Act (Senate Bill 10) is granted in part.

The petition is granted with respect to petitioner's claim that he has been misclassified as a Tier III Sex Offender under the AWA. This Court finds that petitioner is not a Tier III Sex Offender but rather is a Tier II Sex Offender. The Ohio Attorney General and the Cuyahoga County Sheriff shall correct petitioner's classification in eSORN and in all of their other records.

Petitioner's remaining claims in his petition will be addressed by a subsequent order.

Copies of this order shall be immediately served upon Cuyahoga County Sheriff Gerald T. McFaul, and/or a member of his staff, at 1215 West Third Street, Cleveland, Ohio 44113; and Attorney General Marc Dann, 30 East Broad Street, Columbus, OH 43215, and/or a member of his staff.

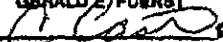


Judge, Cuyahoga County Common Pleas

RECEIVED FOR FILING

JUL 15 2008

GERALD E. FUERST

By  Sup.

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

EARL BRANCH
Plaintiff

STATE OF OHIO
Defendant

Case No: CV-08-658637

Judge: MICHAEL J RUSSO



JOURNAL ENTRY

THIS MATTER COMES BEFORE THE COURT UPON PETITIONER'S MOTION FOR CLASSIFICATION HEARING. HEARING HELD IN OPEN COURT ON 6/9/09. PETITIONER WAS REPRESENTED BY PUBLIC DEFENDER CULLEN SWEENEY AND THE STATE OF OHIO WAS REPRESENTED BY ASSISTANT PROSECUTING ATTORNEY DANIEL VAN. PETITION TO CONTEST APPLICATION OF THE ADAM WALSH ACT (SENATE BILL 10) IS GRANTED IN PART AND STAYED IN PART. THE PETITION IS GRANTED WITH RESPECT TO PETITIONER'S CLAIM THAT HE HAS BEEN MISCLASSIFIED AS A TIER III SEX OFFENDER UNDER THE AWA. PETITIONER PLED GUILTY TO GROSS SEXUAL IMPOSITION IN CR 98-363262. GROSS SEXUAL IMPOSITION IS A TIER 1 OFFENSE PURSUANT TO R.C. 2950.01(E)(1)(C). THIS COURT FINDS THAT PETITIONER IS NOT A TIER III SEX OFFENDER BUT RATHER IS A TIER I SEX OFFENDER. THE OHIO ATTORNEY GENERAL AND THE CUYAHOGA COUNTY SHERIFF SHALL CORRECT PETITIONER'S CLASSIFICATION IN ESORN AND IN ALL OF THEIR OTHER RECORDS. THIS COURT STAYS ITS RULING ON ALL OF PETITIONER'S REMAINING CLAIMS PENDING LITIGATION OF SB 10 COMING TO A COMPLETION. CASE RETURNED TO THE ACTIVE DOCKET ONLY UPON MOTION, AFTER SAID LITIGATION IS COMPLETED. COPIES OF THIS ORDER SHALL BE IMMEDIATELY SERVED UPON CUYAHOGA COUNTY SHERIFF GERALD T. MCFAUL, AND/OR A MEMBER OF HIS STAFF, AT 1215 WEST THIRD STREET, CLEVELAND, OHIO 44113; AND ATTORNEY GENERAL RICHARD CORDRAY, 30 EAST BROAD STREET, COLUMBUS, OH 43215, AND/OR A MEMBER OF HIS STAFF BY THE CLERK OF COURTS.

Michael J Russo 6-9-09

Judge Signature Date

RECEIVED FOR FILING

JUN 10 2009

GERALD E. FUERST, CLERK
By *[Signature]* Deputy

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

WILLIAM JOHNSON
Petitioner-Defendant

-vs-

STATE OF OHIO
Respondent-Plaintiff

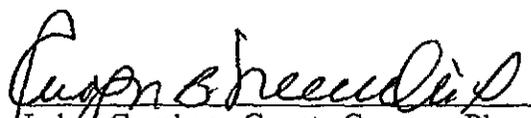
: CASE NO. CV-08-686664
:
: JUDGE CAROLYN B. FRIEDLAND
:
: JOURNAL ENTRY
:
:

Petition to Contest Application of the Adam Walsh Act (Senate Bill 10) is granted in part and stayed in part. Specifically, the petition is granted with respect to petitioner's claim in count eight of his petition that he has been misclassified as a Tier III Sex Offender under the AWA.

The parties stipulate that petitioner's correct classification under the AWA is as a Tier I Sex Offender. Based on that stipulation and for good cause shown, this Court finds that petitioner is not a Tier III Sex Offender but rather is a Tier I Sex Offender. The Ohio Attorney General and the Cuyahoga County Sheriff shall correct petitioner's classification in eSORN and in all of their other records.

This Court stays its ruling on all of petitioner's remaining claims pending litigation of SB 10 coming to a completion. Case to return to the active docket only upon motion, after said litigation is completed.

Copies of this order shall be immediately served upon Cuyahoga County Sheriff Gerald T. McFaul, and/or a member of his staff, at 1215 West Third Street, Cleveland, Ohio 44113; and Attorney General Richard Cordray, 30 East Broad Street, Columbus, OH 43215, and/or a member of his staff.


Judge, Cuyahoga County Common Pleas

RECEIVED FOR FILING

JUN 15 2009

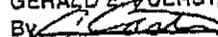
GERALD E. FUERST, CLERK
BY  Deputy

EXHIBIT B



52072251

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

REGINALD L. MAHOME
Plaintiff

STATE OF OHIO
Defendant

Case No: CV-08-661140

Judge: JANET R BURNSIDE

JOURNAL ENTRY

MOTION FOR APPOINTMENT OF COUNSEL, FILED 06/03/2008, IS GRANTED. THE COURT HEREBY APPOINTS THE PUBLIC DEFENDER'S OFFICE TO REPRESENT PLAINTIFF.

Judge Signature

06/16/2008

06/16/2008

RECEIVED FOR FILING
06/17/2008 09:41:59
By: CLTMP
GERALD E. FUERST, CLERK



50732895



**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

JONATHAN HAMILTON
Plaintiff

Case No: CV-08-649860

Judge: EILEEN A GALLAGHER

STATE OF OHIO
Defendant

JOURNAL ENTRY

MOTION FOR APPOINTMENT OF COUNSEL, FILED 02/05/2008, IS GRANTED.
THE CUYAHOGA COUNTY PUBLIC DEFENDER IS ASSIGNED TO REPRESENT THE PLAINTIFF IN THE ABOVE
ACTION.

Judge Signature

Date

RECEIVED FOR FILING

MAR 28 2008

GERALD E. BOERS, CLERK
By DEPUTY



49937105

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

ALLAN ROBERT GOELLNER
Plaintiff

STATE OF OHIO
Defendant

Case No: CV-08-649001

Judge: HOLLIE L GALLAGHER

JOURNAL ENTRY

THE COURT HEREBY APPOINTS THE CLEVELAND PUBLIC DEFENDER TO REPRESENT PETITIONER IN THE CAPTIONED MATTER.

THE CLERK OF COURTS IS HEREBY DIRECTED TO SERVE ALL FUTURE PLEADINGS CARE OF THE CLEVELAND PUBLIC DEFENDER, 301 LAKESIDE AVENUE, CLEVELAND, OHIO 44113, (216) 443-7583.

Judge Signature

02/11/2008

02/08/2008

RECEIVED FOR FILING
02/12/2008 09:35:47
By: CLTMP
GERALD E. FUERST, CLERK



51346161



**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

JASON P WOOTEN
Plaintiff

STATE OF OHIO
Defendant

Case No: CV-08-656419

Judge: BRIDGET M MCCAFFERTY

JOURNAL ENTRY

MOTION FOR APPOINTMENT OF COUNSEL, FILED 4/10/08 IS GRANTED. THE CUYAHOGA COUNTY PUBLIC DEFENDER'S OFFICE IS HEREBY APPOINTED AS COUNSEL FOR THE PETITIONER.

Judge Signature

Date

5-208

RECEIVED FOR FILING

MAY 06 2008

GERALD E. FUERST

By

Dep.



50828420

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

SANFORD DIETER
Plaintiff

STATE OF OHIO
Defendant

Case No: CV-08-649784

Judge: TIMOTHY J MCGINTY

JOURNAL ENTRY

PETITIONER DIETER'S MOTION FOR APPOINTMENT OF COUNSEL, FILED 02/04/2008, IS GRANTED. THE COURT HEREBY APPOINTS THE CUYAHOGA COUNTY PUBLIC DEFENDER AS COUNSEL IN THIS MATTER. THE CLERK IS INSTRUCTED TO ADD THE PUBLIC DEFENDER AS COUNSEL OF RECORD FOR PETITIONER IN THIS MATTER.

Judge Signature

04/07/2008

04/02/2008

RECEIVED FOR FILING
04/08/2008 10:23:08
By: CLTMP
GERALD E. FUERST, CLERK



50800105



**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

WILLIE MONCRIEF
Plaintiff

Case No: CV-08-651446

Judge: SHIRLEY STRICKLAND SAFFOLD

STATE OF OHIO
Defendant

JOURNAL ENTRY

PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL IS HEREBY GRANTED.
PLAINTIFF SHALL BE REPRESENTED BY THE PUBLIC DEFENDER'S OFFICE.
THE PUBLIC DEFENDER WAS NOTIFIED 3-28-08.

Shirley Strickland Saffold 4/1/08
Judge Signature Date

RECEIVED FOR FILING

APR 03 2008

GERALD E. FUERST

By [Signature] Rep.