

ORIGINAL

IN THE OHIO SUPREME COURT

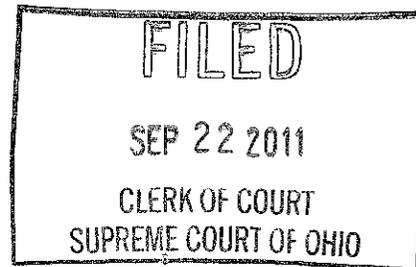
CASE NO. 11-1383

Appeal from the Court of Appeals
Ninth Judicial District
Wayne County, Ohio
Case No. 10 CA 0020

STATE OF OHIO
Appellee

v.

KYLE RABER
Appellant



APPELLANT KYLE RABER'S MEMORANDUM IN SUPPORT OF JURISDICTION

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II STATEMENT OF WHY THIS APPEAL INVOLVES ISSUES OF PUBLIC INTEREST AND/OR GREAT GENERAL INTEREST AS WELL AS SUBSTANTIAL CONSTITUTIONAL QUESTIONS

This appeal involves four fundamental issues that are of great general interest and/or public interest: **(1)** whether the trial court violate Ohio law and, consequently the Appellant's constitutional rights, when it failed to notify the Appellant of his duty to register as sex offender at the time of sentencing as mandated by O.R.C. §2950.03(A)(2); **(2)** whether trial courts can ignore O.R.C. §2950.03(A)(2) at sentencing and then conduct sex offender classification hearings sixteen months after a final judgment entry has been journalized despite no jurisdiction to do so; **(3)** whether sex offender classification hearings are subject to the mandates and deadlines set forth in the Ohio Rules of Criminal Procedure that govern the overall case; and **(4)** whether the Appellant's constitutional right of Due Process and his right against Double Jeopardy were violated when the trial court re-opened this case eleven (11) months after the final judgment entry was journalized and further hearings were held where he was compelled to testify.

Unfortunately, the Ninth District Court of Appeals misinterpreted this Court's holding in State v. Clayborn, 2010-Ohio 2123, as well as ignored longstanding and well settled law regarding jurisdiction and final judgment entries when it rendered its August 8, 2011 decision, which essentially told the Appellant to take this case to the Ohio Supreme Court in order to get some clarity on the issue. See Ninth District Court of Appeals August 8, 2011 Entry, attached as Appendix A.

III STATEMENT OF THE CASE AND FACTS

On December 1, 2008, pursuant to a plea agreement, Appellant Kyle Raber was found guilty of sexual imposition, a third degree misdemeanor, and sentenced to sixty days in jail, fined and placed on probation. See Trial Court Judgment Entry dated Dec. 1, 2008, attached as App. B. Despite the State of Ohio failing to appeal the trial court's final judgment entry, this case was re-opened on November 19, 2009 when Common Pleas Judge Robert Brown, the trial judge, then transferred the case to Common Pleas Judge Mark Wiest citing the existence a conflict of interest. See Trial Court's Entry dated November 19, 2009, attached as App. C. Several months later on March 2, 2010, an evidentiary hearing took place to determine whether the underlying conduct that gave rise to the criminal charge against the Appellant was consensual or not. At this March 2, 2010 hearing, the Trial Court determined that the conduct was not consensual and the Trial Court then provided notice to the Appellant that he would have to register as a Tier 1 sex offender. See Trial Court's March 4, 2010 Order, attached as App. D.

On April 13, 2010, the Trial Court conducted the Sexual Offender Registration Hearing and, on May 6, 2010, Appellant filed his appeal of the April 14, 2010 Order. See Trial Court's April 14, 2010 Order, attached as App. E.

On August 8, 2011, the Ninth District Court of Appeals issued its ruling that affirmed the trial court's prior decision.

This matter is now before this Honorable Court.

IV ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

A. Proposition of Law No. 1:

Ohio Rev. Code Section 2950.03(A)(2) mandates that a trial court provide the notice of duty to register as a sex offender to a defendant at the time of sentencing

Ohio Revised Code Section 2950.03(A)(2), "Notice of Duty to Register and Periodically Verify Information", states that a defendant shall be notified of his or her duty to register at the time of sentencing:

(2) Regardless of when the person committed the sexually oriented offense or child-victim oriented offense, if the person is an offender who is sentenced on or after January 1, 2008 for any offense, and if division (A)(1) of this section does not apply, **the judge shall provide the notice to the offender at the time of sentencing.**

O.R.C. 2950.03(A)(2) (Emphasis added). The statute employs mandatory language and, as such, the statute demands strict compliance.

The Ohio Supreme Court has long held that when a statute is clear and unambiguous, courts are to apply the plain meaning of the terms contained therein. See State v. Cook, 2010-Ohio-6305; State v. McConville, 2010-Ohio-958 (*"there is no need for this court to apply the rules of statutory interpretation when the language of a statute is plain and unambiguous and conveys a clear and definite meaning."*) This Court has also held that if "a term is not defined in a statute, it should be accorded its plain and ordinary meaning." Rhodes v. City of New Philadelphia, 2011-Ohio-3279 at ¶17 (Emphasis added).

Section 2950.03(A)(2) of the Ohio Revised Code employs the term "shall" in directing when and where a trial court is to provide a defendant notice of his or

her duty to register as a sex offender. This is mandatory language and not a suggestion. Black's Law Dictionary defines the term "shall" as follows:

Has a duty to; more broadly, is required ... This is the mandatory sense that drafters typically intend and that courts typically uphold.

Black's Law Dictionary, 8th Edition 2004, p. 1407.

Here, the trial court did not provide notice to the Appellant of his duty to register at the time of the sentencing. In fact, said notice was not provided until March of 2010, some sixteen (16) months after the final judgment had been journalized. Consequently, the trial court violated Ohio law and with the State of Ohio's failure to timely appeal the December 1, 2008 judgment entry, this case should have been rendered permanently closed.

B. Proposition of Law No. 2:

A trial court is divested of jurisdiction over a case after the final judgment entry is journalized by the clerk of courts

A trial court's jurisdiction is established by statute and cannot be conferred otherwise, whether by a party's agreement or acquiescence or even a subsequent court order. See State v. Baker (2008), 119 Ohio St.3d 197; see also Colley v. Colley (1989), 43 Ohio St.3d 87. The Ohio Supreme Court has long held that the journalization of the judgment of conviction pursuant to Ohio Crim.R. 32(C) starts the 30-day appellate clock ticking. See State v. Baker (2008), 119 Ohio St.3d 197. Furthermore, it is well settled that a trial court is divested of jurisdiction of a case after the final entry is journalized by the clerk of courts. See Fiore v. Larger (2nd Dist.), 2009 WL 3246710; see also Smith v. Advantis Computer Consulting, Inc. (10th Dist.) 2001 WL 300621.

In this case, the trial court improperly exercised jurisdiction over the Appellant, Kyle Raber, several months after the trial court no longer had jurisdiction to do so. For example, on December 1, 2008, the trial court issued its final judgment entry and it was journalized by the Wayne County Clerk of Courts. See copy of Dec. 1, 2008 Entry, attached. The State of Ohio failed to file an appeal. The case was closed. On November 19, 2009, the case was re-opened by the trial court and transferred from Judge Brown to Judge Mark Wiest. See copy of Nov. 19, 2009 Order, attached.

The trial court had no jurisdiction to re-open the case in November of 2009, eleven months after the final judgment entry had been journalized on December 1, 2008. The trial court further violated Ohio law and the Appellant's constitutional rights when it held an evidentiary hearing in March of 2010, more than sixteen (16) months after the Appellant had been sentenced. See copy of April 14, 2010 Order. All of this action took place when the trial court no longer had jurisdiction over this case and the State of Ohio failed to file an appeal of the December 1, 2008 judgment entry.

C. Proposition of Law No. 3:

A sexual offender classification hearing is a proceeding within the context of the criminal case and, therefore, subject to the Rules of Criminal Procedure and mandated deadlines therein

In its August 8, 2011 opinion, the Ninth District Court of Appeals cites to State v. Clayborn, 125 Ohio St.3d 450, as the basis for its determination that the trial court did have jurisdiction to do what it did when it re-opened Appellant's case eleven (11) months after final judgment had been rendered and journalized

with the Wayne County Clerk of Courts. However, the Court of Appeals misinterprets this Court's holding in Clayborn. For example, the Court of Appeals states in its decision:

The Court noted that 'while sex offender classification proceedings are civil in nature and require a civil manifest weight of the evidence standard, ... an appeal from a sexual offender classification judgment is a civil matter within the context of a criminal case.'

See Court of Appeals Aug. 8, 2011 Order, ¶7. The Court of Appeals uses this portion of the Ohio Supreme Court's decision to support its position that the trial court had jurisdiction long after the final judgment entry had been journalized because, at least according to the Court of Appeals, the issue was a civil matter and not criminal, and therefore not subject to the constraints of the Ohio Rules of Criminal Procedure and the mandatory time frames set forth therein.

However, this is not what the Ohio Supreme Court held. In Clayborn, this Court held that, while the sex offender classification hearings are civil in nature, they exist within a criminal case and it is the criminal case that controls the time frames and procedural aspects:

We have not converted sex-offender-classification proceedings into separate civil cases procedurally or assigned them a civil docket number.

Clayborn, 2010-Ohio-2123 at ¶10. (Emphasis added). Additionally, the Supreme Court held the time frames governing appeals set forth App.R.4(A) still apply:

Therefore, although the court reviews the classification matter on civil standards, the appeal requirements applicable to criminal cases nonetheless apply.

Clayborn, at ¶11. (Emphasis added).

In Clayborn, the defendant failed to file his appeal of the sex offender classification within the thirty (30) day period after the final judgment entry had been journalized. Clayborn, supra at ¶4, 5. The Ohio Supreme Court ruled that since the defendant missed the criminal appeal deadline, he needed to seek leave of court in order to file his appeal. Thus, while civil in nature, the sex offender classification hearing was governed by the criminal case and the deadlines and procedures that accompanied it.

The Ninth District Court of Appeals turns Clayborn on its head because in Clayborn, the defendant did eventually appeal the trial court's decision, albeit untimely. In this case, the State of Ohio failed to appeal the trial court's December 1, 2008 judgment entry. Thus, the case was closed and everything occurred after December 1, 2008 is a nullity; except for the fact that the Appellant served his sixty (60) day jail sentenced, paid his fines and served probation.

As a consequence, Clayborn actually supports the Appellant's position, given that it was the State of Ohio who had the duty to appeal if, in fact, it was not satisfied with the trial court's December 1, 2008 judgment entry.

Moreover, this Court recently held in State v. Williams, 2011-Ohio-3374, that S.B. 10 and/or Ohio's Adam Walsh Act as set forth in O.R.C. 2950 *et seq.* is no longer "civil and remedial" but it is, in fact, "punitive." Consequently, the cases cited by the Ninth District Court of Appeals ("State v. Wood, 2010-Ohio-2759" and "State v. Williams, 2008-Ohio-3586") for its belief that sex offender classification hearings can be held at any time after a final judgment entry has been journalized are no longer applicable. The Ohio Supreme Court has ruled

that Chapter 2950, as amended by S.B. 10 on January 1, 2008, is no longer civil and remedial but, in fact, it is punitive.

Given the complexities of this case, the procedural legal fiction that has occurred and this Court's July 2011 ruling in State v. Williams, the Ninth District Court of Appeals' August 8, 2011 opinion is essentially seeking clarification from this Court on these issues:

Accordingly, until the Supreme Court directs this Court otherwise, we will continue to rely on our precedent and *Clayborn*, which support the conclusion that the trial court possessed jurisdiction in this matter.

Ninth District Court of Appeals' August 8, 2011 Judgment Entry, ¶8.

Therefore, given the punitive nature of sex offender classification hearings, such hearings must be held to the standards of all other criminal statutes and require strict compliance and interpretation. As a result, since the trial court had no jurisdiction after December 1, 2008 and the State of Ohio failed to file an appeal, this case should have been permanently closed.

D. Proposition of Law No. 4:

The Trial Court Violated The Appellant's Constitutional Rights When it Re-Opened The Case And Held Further Hearings After Final Judgment Entry Was Journalized

Now that the Ohio Supreme Court has held O.R.C. §2950 to be "punitive", it is clear that the trial court violated the Appellant's constitutional rights of Due Process and Double Jeopardy when it re-opened the case long after final judgment and held further hearings. The Rules of Criminal Procedure mandated that the Appellant be notified of his duty to register at the time he was sentenced

on December 1, 2008. This did not occur, therefore, allowing the trial court to re-open this case eleven months later violated the Appellant's right to Due Process and the trial court's holding an evidentiary hearing in March of 2010 violated the Appellant's right against Double Jeopardy.

In fact, this evidentiary hearing begs the question of why it even needed to occur. Appellant pleaded guilty to misdemeanor sexual imposition, a third degree misdemeanor, under O.R.C. 2907.06(A)(1). The crime of sexual imposition is defined as someone "*engaging in sexual conduct with another when the offender knows the conduct is offensive, or is reckless in that regard.*" See R.C. 2907.06(A)(1) (Emphasis added). Thus, it was unnecessary to even hold an evidentiary hearing because lack of consent is inherent in the charge itself. The fact is, the trial court should have ordered the Appellant to register as a sex offender at the time he was sentenced on December 1, 2008. However, no such order was issued, the December 1, 2008 judgment entry was silent as to sex offender registration, the State of Ohio failed to seek a nunc pro tunc amendment to the final judgment entry, and the State of Ohio failed to appeal the decision. Thus, the case should have been closed after the thirty (30) day time frame to appeal had expired.

Based upon the foregoing, there is great general interest and/or public interest in this Court accepting jurisdiction over this appeal in order to clarify the issues in this case and clear up any confusion over a trial court's jurisdiction regarding sex offender classification hearings as well as how to interpret O.R.C.

§2950.03(A)(2), and its now "punitive" aspects especially in light of this Court's recent decision as set forth in State v. Williams, 2011-Ohio-3374.

V CONCLUSION

For the reasons set forth above, this case involves matters of public and great general interest and substantial constitutional questions. The Appellant requests that this Court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully submitted,



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Attorney for Appellant Kyle Raber

CERTIFICATE OF SERVICE

A true and accurate copy of the Appellant's Memorandum in Support of Jurisdiction was delivered via intra-office mail through the Wayne County Clerk of Courts to Latecia Wiles, Esq., of the Wayne County Prosecutor's Office on this 20th day of September, 2011.



David T. Eager, Esq.
Attorney for Appellant
Kyle Raber

APPENDIX A

STATE OF OHIO)
)ss: COUNTY OF WAYNE)

FILED
9TH DISTRICT IN THE COURT OF APPEALS
COURT OF APPEALS NINTH JUDICIAL DISTRICT

2011 AUG 8 AM 7 11

STATE OF OHIO

C.A. No. 10CA0020
TIM NEAL

Appellee

CLERK OF COURTS

v.

KYLE D. RABER

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF WAYNE, OHIO
CASE No. 08-CR-0117

Appellant

DECISION AND JOURNAL ENTRY

Dated: August 8, 2011

BELFANCE, Presiding Judge.

{¶1} Appellant, Kyle Raber, appeals from the order of the judgment entry of the Wayne County Court of Common Pleas. This Court affirms.

I.

{¶2} Mr. Raber pleaded guilty to a single count of sexual imposition, a third-degree misdemeanor. The court sentenced him to sixty days in jail, thirty of which were suspended, and placed him on community control for a period of two years. Mr. Raber did not appeal the December 1, 2008 judgment entry of his conviction and sentence.

{¶3} At the sentencing hearing, the court expressed uncertainty about whether Mr. Raber would be required to register as a sex offender. With the agreement of the parties, the court took the matter under advisement so that counsel could have the opportunity to brief issues related to sex offender classification. The court later determined that, pursuant to R.C. 2950.01(B)(2), Mr. Raber would be required to register as a sex offender only if the conduct

underlying Mr. Raber's conviction was non-consensual. The court held an evidentiary hearing at which it determined that the conduct was not consensual and that Mr. Raber was therefore required to register as a sex offender. Pursuant to R.C. 2950.03, the court subsequently held another hearing, journalized in its April 14, 2010 entry, at which it provided Mr. Raber with notice of the sex offender registration requirements.

{¶4} Mr. Raber appealed presenting three assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

"The December 1, 2008 Judgment Entry Was a Final Order And, At That Time, The Trial Court Was Divested of Jurisdiction Over This Case[.]"

ASSIGNMENT OF ERROR II

"The March 4, 2010 And April 14, 2010 Court Orders Were Nullities Due To The Fact The Trial [Court] Had No Jurisdiction After The December 1, 2008 Judgment Entry Was Journalized[.]"

{¶5} In his first and second assignments of error, Mr. Raber asserts that the trial court lacked subject matter jurisdiction to conduct the March 2, 2010 evidentiary hearing or to issue any orders concerning sex offender classification after it filed its judgment entry of conviction and sentence on December 1, 2008.

{¶6} Essentially, Mr. Raber argues that the trial court did not have jurisdiction to determine whether he was a sex offender because it no longer had jurisdiction over the case after entering a final judgment of conviction and sentence. Mr. Raber contends that the trial court not only lacked jurisdiction to alter his final sentence but it also lacked authority to provide notice of and impose a sex offender classification after sentencing. In particular, he points to language in the current version of the Adam Walsh Act that the "judge shall provide the notice to the offender *at the time of sentencing.*" (Emphasis in original.) See R.C. 2950.03(A)(2).

{¶7} We are not convinced that the trial court lacked jurisdiction to proceed as it did. In reaching that conclusion, we find *State v. Clayborn*, 125 Ohio St.3d 450, 2010-Ohio-2123, to be instructive. In addressing the current version of Chapter 2950 of the Ohio Revised Code, the *Clayborn* Court discussed the unique nature of sex-offender-classification proceedings. The Court noted that “[w]hile sex-offender-classification proceedings are civil in nature and require a civil manifest-weight-of-the-evidence standard, * * * an appeal from a *sexual offender classification judgment* is a civil matter within the context of a criminal case.” (Emphasis added.) *Id.* at ¶11. The above supports the notion that a determination that a defendant is a sex offender as specified by Chapter 2950 of the Ohio Revised Code constitutes a separate and distinct judgment from the judgment of conviction and sentence. See *id.*; see, also, *State v. Wood*, 5th Dist. No. 09-CA-205, 2010-Ohio-2759, at ¶14 (concluding sex offender classification is not part of the defendant’s sentence and thus determining there was no error in classifying defendant after imposing sentence); *State v. Williams*, 177 Ohio App.3d 865, 2008-Ohio-3586, at ¶¶10-11 (“Accordingly, in either a defendant’s or a state’s appeal, an appeal from the defendant’s classification is legally distinct from any appeal regarding his underlying sentence. Despite the fact that Williams’s sentence was void and had to be vacated pursuant to *Bezak*, the status of her sentence did not affect the status of her classification.”) Thus, Mr. Raber’s argument that a trial court is impermissibly modifying a defendant’s final judgment of conviction and sentence when it classifies a defendant as a sex offender post-sentence is not well taken.

{¶8} Accordingly, until the Supreme Court directs this Court otherwise, we will continue to rely on our precedent and *Clayborn*, which support the conclusion that the trial court possessed jurisdiction in this matter. See, e.g., *Clayborn* at ¶11; *Williams* at ¶¶10-11. Accordingly, we overrule Mr. Raber’s first and second assignments of error.

ASSIGNMENT OF ERROR III

“The March 2, 2010 Evidentiary Hearing Violated The Defendant-Appellant’s Rights Under The United States Constitution[.]”

{¶9} In his third assignment of error, Mr. Raber asserts that the trial court violated his right against Double Jeopardy, his right against self-incrimination, and his due process rights in conducting the March 2, 2010 evidentiary hearing to determine whether the sexual conduct involved in Mr. Raber’s offense was consensual.

{¶10} Mr. Raber did not raise these arguments in the trial court. Accordingly, Mr. Raber has forfeited them. See *State v. Cargile*, 123 Ohio St.3d 343, 2009-Ohio-4939, at ¶15 (“[T]here is no indication that Cargile * * * argued a violation of this right before the trial court. Cargile failed to raise this claim and has thereby waived it.”); *State v. Frazier*, 115 Ohio St.3d 139, 2007-Ohio-5048, at ¶155 (“[A] constitutional right can be waived in criminal cases by the failure to make timely assertion of it.”); *State v. Childs* (1968), 14 Ohio St.2d 56, 61 (“It is a general rule that an appellate court will not consider any error which counsel for a party complaining of the trial court’s judgment could have called but did not call to the trial court’s attention at a time when such error could have been avoided or corrected by the trial court.”). Further, as Mr. Raber has not argued plain error on appeal, this Court declines to construct an argument for him. See *State v. Hoang*, 9th Dist. No. 09CA0061-M, 2010-Ohio-6054, at ¶21. Mr. Raber’s third assignment of error is overruled.

III.

{¶11} Mr. Raber’s assignments of error are overruled. The judgment of the Wayne County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.


EVE V. BELFANCE

FOR THE COURT I certify that this is a true copy of
the original on file.
WITNESS my hand and seal of the 9th District
Court of Appeals This 20th day of Sept.
2011

TIM NEAL

Clerk of Courts, Wayne County, Ohio

By: 

MOORE, J.
CONCURS

DICKINSON, J.
CONCURS, SAYING:

{¶12} I concur in the majority's judgment and in most of its opinion. I do not concur in the majority's refusal to consider whether the trial court committed plain error by not holding an evidentiary hearing regarding whether the sexual conduct at issue was consensual until 15 months after Mr. Raber pleaded guilty. The trial court's failure did not constitute plain error, and, therefore, I agree that Mr. Raber's third assignment of error is properly overruled.

APPEARANCES:

DAVID T. EAGER, Attorney at Law, for Appellant.

DANIEL R. LUTZ, Prosecuting Attorney, and LATECIA E. WILES, Assistant Prosecuting Attorney, for Appellee.

APPENDIX B

IN THE COURT OF COMMON PLEAS, WAYNE COUNTY, OHIO

2008 DEC 1 AM 8 39

STATE OF OHIO,

Plaintiff

vs.

KYLE D. RABER,

Defendant

TIM HEAL
CLERK OF COURTS

CASE NO. 08-CR-0117

JUDGMENT ENTRY
SENTENCING AND PROBATION

This matter came before the Court for sentencing on November 26, 2008. Defendant had previously entered a plea of not guilty at arraignment. The defendant appeared in court, having previously entered a plea of guilty to the following: Sexual Imposition, as amended, a Misdemeanor of the Third Degree. The Court hereby enters a finding of guilty to that offense.

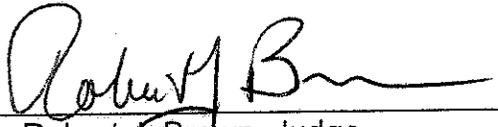
The Court, after having reviewed the presentence investigation report, and after having afforded the defendant and defense counsel the opportunity to speak, sentences the defendant as follows: Sixty (60) days in the Wayne County Jail. Thirty (30) days of the sentence is suspended and the defendant is placed on community control for **two (2) years**, subject to the following terms and conditions:

1. Obey all local, state and federal laws.
2. Follow the guidance and instruction of your Probation Officer.
3. Abide by the rules and regulations of the Adult Probation Department.
4. Pay the costs of this action.
5. Perform -100- hours of community service work as directed by the Adult Probation Department.
6. Pay a fine of \$500.00 as directed by the Adult Probation Department.

JCR74-P. 222

22

- 7. Pay probation maintenance fee of \$300.00.
- 8. Other conditions:
 - Defendant shall report to the Wayne County Jail on December 19, 2008.
 - Mental health services as directed by the Adult Probation Department.



 Robert J. Brown, Judge

JOURNALIZED

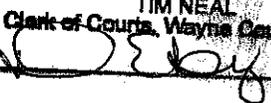
DEC - 1 2008

TIM NEAL
CLERK, WAYNE COUNTY, OHIO

I hereby certify that this is a true copy of the original on file.

WITNESS my hand and seal of the Common Pleas Court This 20th day of Sept 2008

TIM NEAL
Clark of Courts, Wayne County, Ohio

By: 

COPY TO ALL COUNSEL

MAILED _____
 Regular _____
 Certified _____
 Place in box Pros, Prob
J. Johnson Jr., WCSO
 By Wede
 Dep. Clerk

P. 223

APPENDIX C

IN THE COURT OF COMMON PLEAS
COMMON PLEAS COURT
WAYNE COUNTY, OHIO

09 NOV 19 AM 11:58

STATE OF OHIO,

TIM NEAL
CLERK OF COURTS

Plaintiff

vs.

KYLE D. RABER,

Defendant

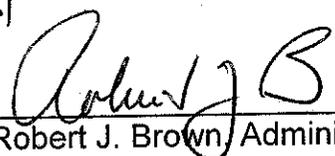
CASE NO. 08-CR-0117

JOURNAL ENTRY
TRANSFER OF CASE

For good cause, this case is transferred from the docket of Judge Brown to the docket of Judge Wiest.

IT IS SO ORDERED.

JCR-849 P.221


Robert J. Brown Administrative Judge

JOURNALIZED

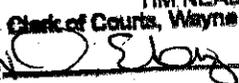
NOV 19 2009

TIM NEAL
CLERK, WAYNE COUNTY, OHIO

COPY TO ALL COUNSEL ✓

MAILED
Regular Defy
Certified _____
Placed in box Pro's Prob Wiest
By Brown JOHNSON Jr.
Dep. Clerk 11-20-09

I hereby certify that this is a true copy of the original on file.
WITNESS my hand and seal of the Common Pleas Court This 20th day of Sept 2009

TIM NEAL
Clark of Courts, Wayne County, Ohio
By: 

APPENDIX D

✓

FILED
IN THE COURT OF COMMON PLEAS, WAYNE COUNTY, OHIO
COMMON PLEAS COURT
WAYNE COUNTY, OHIO

STATE OF OHIO
2010 MAR 4 AM 11 46

Plaintiff TIM NEAL
CLERK OF COURTS
vs.

CASE NO. 08-CR-0117

KYLE D. RABER

JUDGMENT ENTRY

Defendant

On March 2, 2010 a hearing was held to determine whether the defendant is a sex offender subject to Tier 1 registration.

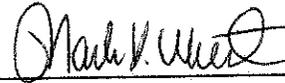
The court finds the following:

1. On April 7, 2008 the defendant was indicted for sexual battery in violation of R.C. 2907.03.
2. On October 28, 2008, pursuant to a plea agreement, the defendant entered a guilty plea to an amended indictment charging him with sexual imposition in violation of R.C. 2907.06(A)(1).
3. He was sentenced on November 25, 2008. The registration issue was not decided at that time. On November 19, 2009 the assigned judge due to a conflict, transferred the case to the undersigned.
4. The issue is whether the defendant is excluded from the definition of sex offender by reason of R.C. 2950.01(B)(2). If so, he is not subject to registration.
5. According to R.C. 2950.01(B)(2), if the offense involves consensual sexual conduct, the offender is not a "sex offender" for purposes of registration.
6. The court has concluded, after a review of the testimony, that the state has proven by clear and convincing evidence that the defendant forced the victim to have anal intercourse.
7. The defendant is a sex offender as defined in R.C. 2950.01(B)(1).

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The defendant is subject to Tier 1 registration. Since Judge Brown did not provide notice at the time of sentencing, the defendant will have to appear so that the court can review with him the notice form required by R.C. 2950.03. A time to appear can be arranged by defendant's counsel.

IT IS SO ORDERED.



Mark K. Wiest, Judge

Dated: 3/3/10

JOURNALIZED

MAR 04 2010

TIM NEAL, CLERK
WAYNE COUNTY, OHIO

COPY TO ALL COUNSEL ✓
FILED
Regular _____
Certified _____
Placed in box Pros Prob JOHNSON Jr.
Capt Handman w/Co
By M. Handman
Dep. Clerk

3-5-10 hereby certify that this is a true copy of the original on file.

WITNESS my hand and seal of the Common Pleas Court This 20th day of Sept 2010

TIM NEAL
Clerk of Courts, Wayne County, Ohio

By: T. Neale

JCR-869 P13/16

APPENDIX E

✓

FILED
COMMON PLEAS COURT
IN THE COURT OF COMMON PLEAS, WAYNE COUNTY, OHIO
WAYNE COUNTY, OHIO

STATE OF OHIO 2010 APR 14 PM 4 04

Plaintiff	TIM NEAL :	CASE NO. 08-CR-0117
	CLERK OF COURTS	
vs.	:	
KYLE D. RABER	:	JUDGMENT ENTRY
Defendant	:	

The defendant was indicted for sexual battery on April 7, 2008. The case was assigned to Judge Brown. The case was scheduled for a bench trial on October 28, 2008. On October 28, 2008 the defendant entered a plea of guilty to an amended charge of Sexual Imposition, a misdemeanor of the third degree. The defendant was sentenced on that charge on November 26, 2008 to 2 years of community control.

R.C. 2950.03 specifies how a person convicted of a sexually oriented offense who has a duty to register pursuant to R.C. 2950.04 is to be notified of the registration requirements. R.C. 2950.03(A)(2) states in pertinent part . . . "if the person is an offender who is sentenced on or after January 1, 2008 for any offense . . . the judge shall provide the notice to the offender at the time of sentencing". This did not happen on November 26, 2008. Judge Brown took the matter under advisement due to an issue regarding the definition of sex offender under R.C. 2950.01(B)(2)(a). (The issue being whether the offense involved consensual sexual conduct). Judge Brown never decided the issue. He transferred the case to the undersigned on November 19, 2009. On March 2, 2010, the hearing was held to determine if the offense involved consensual sexual conduct pursuant to R.C. 2950.01(B)(2)(a). On March 4, 2010, this court filed an entry finding the sexual conduct was not consensual thereby making the defendant a sex offender as defined by R.C. 2950.01(B)(1) and subject to Tier 1 registration. Since Judge Brown did not provide notice at the time of sentencing, the defendant was scheduled to appear on April 13, 2010 so that the notice could be given. The defendant was so notified on April 13, 2010. A registration form was completed and signed by the defendant. The defendant has moved for a stay of the court's order of March 4, 2010 and a stay from all requirements that he register as a sex offender so that he can appeal. The motion for stay is granted. The defendant shall not be

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required to register until further order of the court.

IT IS SO ORDERED.

Mark K. Wiest

Mark K. Wiest, Judge

Dated: _____

4/14/10

JOURNALIZED

APR 14 2010

TIM NEAL, CLERK
WAYNE COUNTY, OHIO

I hereby certify that this is a true copy of
the original on file.

WITNESS my hand and seal of the Common

Pleas Court This 20th day of Sept
2011

TIM NEAL
Clerk of Courts, Wayne County, Ohio

By: *D. Stog*

COPY TO ALL COUNSEL ✓

MAILED

Regular _____

Certified _____

Placed in box Pros Prob Edg RR

capt Hardman

By _____

Dep. Clerk

M. Foster
4-16-10

JCR 88, P1/52