

IN THE SUPREME COURT OF OHIO

ORIGINAL

IN RE A.R.

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Case No. 2009-0189

On Appeal from the  
Licking County Court of Appeals  
Fifth Appellate District

C.A. Case No. 08-CA-17

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**MOTION FOR RECONSIDERATION, OR IN THE ALTERNATIVE  
MOTION TO STAY THIS COURT'S OCTOBER 20, 2011 MANDATE**

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OFFICE OF THE OHIO PUBLIC DEFENDER

KENNETH OSWALT #0037208  
Licking County Prosecutor

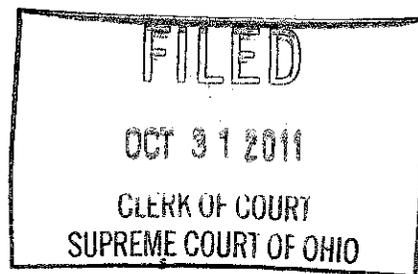
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IN THE SUPREME COURT OF OHIO

IN RE A.R.

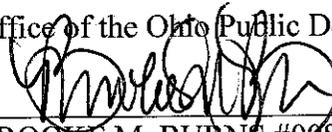
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**MOTION FOR RECONSIDERATION, OR IN THE ALTERNATIVE  
MOTION TO STAY THIS COURT'S OCTOBER 20, 2011 MANDATE**

Pursuant to S.Ct.Prac.R. 11.2, A.R. respectfully requests that this Court reconsider the remedy announced in this case on October 20, 2011. Specifically, A.R. requests that this Court vacate his classification rather than ordering it reversed and remanded, as the Licking County Juvenile Court lacks jurisdiction to issue any further orders in his case. In the alternative, A.R. asks that this Court stay its October 20, 2011 mandate in this case pending the outcome of *In re J.V.*, 2011-0107; discretionary appeal accepted 128 Ohio St.3d 1499, 2011-Ohio-2420 (May 25, 2011) and *State of Ohio ex rel Pression Jean-Baptiste v. Honorable James W. Kirsch*, 2011-0934. The reasons for this motion are more fully stated in the attached memorandum in support.

Respectfully submitted,

Office of the Ohio Public Defender



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## MEMORANDUM IN SUPPORT

On October 20, 2011, this Court found that the retroactive application of Senate Bill 10 to persons “who committed sex offenses prior to its enactment, violates Section 28, Article II of the Ohio Constitution, which prohibits the General Assembly from passing retroactive laws.” *In re D.J.S.*, Slip Opinion No. 2011-Ohio-5342, at syllabus. Thus, this Court reversed A.R.’s classification under the authority of *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374. *In re A.R.*, Slip Opinion No. 2011-Ohio-5344, ¶1. In addition, this Court remanded his case to the Licking County Juvenile Court for application of *Williams*. *Id.* However, because A.R.’s appeal concerned the imposition of his initial classification and this Court’s decision renders that initial classification invalid, he now has no valid classification. And, because A.R. is over the age of twenty-one, the Licking County Juvenile Court lacks jurisdiction to impose an initial classification in this case.

A juvenile court’s power “is derived from Section 1, Article IV of the Constitution of Ohio, and the court is established and its jurisdiction is defined by [O.R.C.] Chapter 2151....” *The State, ex rel. Schwartz, Judge v. Haines, Director of Mental Hygiene and Correction* (1962), 172 Ohio St. 572, 573. Juvenile courts have exclusive jurisdiction over children who are alleged to be delinquent. R.C. 2151.23(A)(1). In delinquency proceedings, “child” means a person who is under eighteen years of age, except as otherwise provided” in R.C. 2152.02(C)(2)-(6). R.C. 2152.02(C)(1); *In re Andrew*, 119 Ohio St.3d 466, 2008-Ohio-4791, ¶4-17.

For a child who violates the law prior to turning eighteen, he is deemed a “child” regardless of his age at the time the complaint is filed or a hearing on the complaint is held. R.C. 2152.02(C)(3). However, R.C. 2152.02(C)(6) expressly limits the juvenile court’s jurisdiction

over a child to the age of twenty-one: “The juvenile court has jurisdiction over a person who is adjudicated a delinquent child or juvenile traffic offender prior to attaining eighteen years of age until the person attains twenty-one years of age.” R.C. 2152.02(C)(6). Further, a juvenile court’s power over previously validly entered orders expires upon the child’s attainment of twenty-one years of age. R.C. 2151.38; R.C. 2152.22(A).

An exception for the juvenile court’s jurisdiction to extend beyond the age of twenty-one over a previous validly entered order is found in Ohio’s juvenile sex offender registration and notification provisions. Specifically, the Revised Code permits juvenile courts to conduct classification review hearings for juvenile offender registrants beyond their twenty-first birthday. R.C. 2151.84; 2152.85. Under R.C. 2152.84 and 2152.85, a juvenile court is permitted to revisit and modify the classification orders of juvenile offender registrants beyond the traditional age jurisdiction of the juvenile court, provided that the court had entered a valid classification order prior to the child’s twenty-first birthday. But, although R.C. 2152.84 and 2152.85 each permit juvenile courts to modify the existing orders of persons who received valid initial classifications pursuant to R.C. 2152.82, 2152.83, regardless of their age, the Code does not grant juvenile courts the authority to impose initial classifications on individuals who turned twenty-one before they received a valid juvenile sex offender classification. *In re G.M.*, 188 Ohio App.3d 318, 2010-Ohio-2295, ¶17 (“[The language in R.C. 2152.84] speaks to the extension and effect beyond a child’s 21st birthday, to be given to a classification order which was *issued before a child’s 21st birthday* [; i]t does not extend the jurisdiction of the juvenile court *to issue* the classification order *after* a child has attained age twenty-one.”). (Emphasis in original.)

A.R.’s classification as a tier III juvenile offender registrant was found unconstitutional by this Court on October 20, 2011. (See Attached). This Court’s finding of unconstitutionality

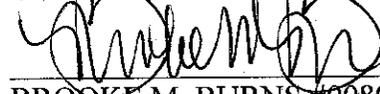
rendered A.R.'s original classification invalid. *State v. Gingell*, 128 Ohio St. 3d 444; 2011-Ohio-1481 (held that a violation of sex offender registration requirements was invalid when the violation was based on the unlawful application of Senate Bill 10 to Appellant). In *Gingell*, an adult sex offender registrant appealed his conviction and sentence for violating a reporting requirement retroactively imposed against him under Ohio's version of the Adam Walsh Act. *Id.* at ¶1. This Court vacated Mr. Gingell's conviction because the violation stemmed from his unlawful classification under Senate Bill 10. *Id.* at ¶8, citing *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶66. This Court determined that, based on its holding in *Bodyke*, the current version of R.C. 2950 did not apply to Mr. Gingell, and therefore, he could not be charged, convicted, and sentenced for having violating one of its requirements. *Id.* Importantly, in order for this Court to reach the conclusion that Gingell's conviction for failing to register was invalid, it had to find that Gingell's original classification order was also invalid. *Id.* at ¶8.

In this case, this Court found A.R.'s classification under Senate Bill 10 to be unlawful. (See Attached). As such, A.R. has no valid classification against him now, as his classification was invalid when it was originally imposed. Thus, the Licking County Juvenile Court has no jurisdiction to impose an initial classification against A.R., as he is outside the age jurisdiction of the juvenile court. R.C. 2152.02(C)(6). Further, the court has no continuing jurisdiction to review or modify A.R.'s previously imposed initial classification order, because it is invalid. *G.M.* at ¶17; R.C. 2152.84; 2152.85; R.C. 2151.38; 2152.22(A). For these reasons, A.R. requests that this Court reconsider its order mandating that A.R.'s classification be remanded, and instead order that his classification be vacated.

In the alternative, A.R. requests that this Court stay its mandate in this case pending the outcome of *In re J.V.*, and *State of Ohio ex rel Pression Jean-Baptiste v. Honorable James W. Kirsch*, as the issues concerning whether a juvenile court may impose punishment or an initial classification after an individual has turned twenty-one are at issue in those cases. Specifically, the question at issue in the second proposition of law in *J.V.* is whether juvenile courts have the authority to impose criminal punishments against a delinquent after the person turns twenty-one. (Case No. 2011-0207, *Appellant's Merit Brief*, p. 31). At issue in *Jean-Baptiste v. Kirsch* is whether a juvenile court may conduct an initial classification hearing after a person has turned twenty-one. (Case No. 2011-0934, *Appellant's Merit Brief*, p. 11). Because the outcome of those cases will directly affect whether the Licking County Juvenile Court has jurisdiction to impose an initial classification on A.R. now that he is over the age of twenty-one, A.R. respectfully requests that in the alternative to reconsidering the remedy announced in this case, this Court stay its October 20, 2011 mandate pending the outcome of *J.V.* and *Jean-Baptiste v. Kirsch*.

Respectfully submitted,

Office of the Ohio Public Defender



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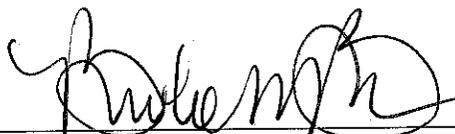
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COUNSEL FOR A.R.

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was forwarded by regular U.S. Mail this 31<sup>st</sup> day of October, 2011, to the office of Kenneth W. Oswalt, Licking County Prosecuting Attorney, Licking County Prosecutor's Office, Licking County Admin. Bldg., 20 South Second Street, 4<sup>th</sup> Floor, Newark, Ohio 43055.



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Assistant State Public Defender

COUNSEL FOR A.R.

# The Supreme Court of Ohio

FILED

OCT 20 2011

CLERK OF COURT  
SUPREME COURT OF OHIO

In re: A. R., Delinquent Child

Case No. 2009-0189

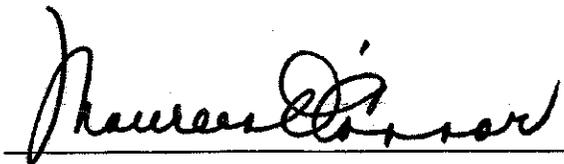
JUDGMENT ENTRY

APPEAL FROM THE  
COURT OF APPEALS

This cause, here on appeal from the Court of Appeals for Licking County, was considered in the manner prescribed by law. The cause is remanded to the court of appeals for application of *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, \_\_\_ N.E.2d \_\_\_.

It is further ordered that a mandate be sent to the Court of Common Pleas for Licking County to carry this judgment into execution and that a copy of this entry be certified to the Clerk of the Court of Appeals for Licking County for entry.

(Licking County Court of Appeals; No. 08CA17)



Maureen O'Connor  
Chief Justice