

ORIGINAL

IN THE  
SUPREME COURT OF OHIO

IN RE: BRUCE S.

: NO. 12-0059  
: On Appeal from the Hamilton County  
: Court of Appeals, First Appellate  
: District  
:  
: Court of Appeals  
: Case Number C-110042  
:

NOTICE OF CERTIFICATION OF CONFLICT

Joseph T. Deters (0012084P)  
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SUPREME COURT OF OHIO

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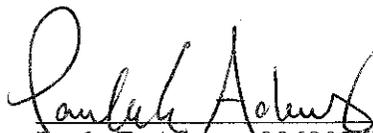
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Pursuant to Rule IV of the Ohio Supreme Court Rules of Practice, Plaintiff-Appellant the State of Ohio gives this Court notice that the First District Court of Appeals has certified a conflict to this Court. The issue certified is: "May Senate Bill 10's classification, registration, and community-notification provisions be constitutionally applied to a sex offender who had committed his sex offense between the July 1, 2007, repeal of Megan's Law and the January 1, 2008, effective date of Senate Bill 10's classification, registration, and community-notification provisions?"

Pursuant to Rule IV, copies of the entry certifying the conflict as well as the decision that the First District found itself to be in conflict with are attached to this notice.

Respectfully,

Joseph T. Deters, 0012084P  
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**CERTIFICATION OF SERVICE**

I hereby certify that I have sent a copy of the foregoing Memorandum in Response, by United States mail, addressed to Amanda J. Powell, Ohio Public Defender's Office, 250 East Broad Street, Suite 1400, Columbus, OH 43215, counsel of record, this 9<sup>th</sup> day of January, 2012.

  
Paula E. Adams, 0069036P  
Assistant Prosecuting Attorney

**APPENDIX**

*In re. Bruce S.*, 1<sup>st</sup> Dist. No. C-110042, 2011-Ohio-6634 .....A-1  
*State v. Scott*, 8<sup>th</sup> Dist. No. 91890, 2011-Ohio-6255 ..... B-1

**APPENDIX**

**A-1**

**In re Bruce S.** 2011 WL 6826422  
 Court of Appeals of Ohio, First District, Hamilton County. December 23, 2011 Slip Copy 2011 -Ohio- 6634

CHECK OHIO SUPREME COURT RULES FOR REPORTING OF OPINIONS AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio,  
 First District, Hamilton County.

In re BRUCE S.

No. C-110042. Decided Dec. 23, 2011.

Criminal Appeal from Hamilton County Juvenile Court.

#### Attorneys and Law Firms

Joseph T. Deters, Hamilton County Prosecuting Attorney, and Paula E. Adams, Assistant Prosecuting Attorney, for Appellee State of Ohio.

Office of the Ohio Public Defender and Amanda J. Powell, Assistant State Public Defender, for Appellant Bruce S.

#### Opinion

PER CURIAM.

{¶ 1} Appellant Bruce S. admitted to and was adjudicated delinquent for committing an act on September 1, 2007, that, if committed by an adult, would have constituted the sexually-oriented offense of rape. The juvenile court, believing that Am. Sub.S.B. No. 10 ("Senate Bill 10") required it to classify Bruce S. as a Tier III sex offender, classified Bruce S. as a Tier III sex offender subject to community notification. We reversed the Tier III classification on appeal, holding that the juvenile court had discretion to classify Bruce S. as a Tier I, a Tier II, or a Tier III offender, and that the failure of the trial court to exercise that discretion was reversible error. *In re Bruce S.* (Dec. 16, 2009), 1st Dist. No. C-081300. We remanded the case to the juvenile court for a new hearing to determine Bruce S.'s appropriate sex-offender classification.

{¶ 2} A juvenile court magistrate held a new classification hearing on May 19, 2010. The magistrate ordered Bruce S. to register pursuant to Senate Bill 10 as a Tier III juvenile sex offender subject to community notification. The trial court overruled Bruce S.'s objections to the magistrate's decision and on December 20, 2010, adopted it as the judgment of the court. Bruce S. has appealed his classification under Senate Bill 10 as a Tier III juvenile-sex-offender registrant subject to community notification.

{¶ 3} On July 13, 2011, the Ohio Supreme Court decided *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, which held that Senate Bill 10's classification, registration, and community-notification provisions could not constitutionally be retroactively applied to sex offenders who had committed their sex offenses prior to its enactment. Senate Bill 10 was enacted June 27, 2007. Senate Bill 10 repealed Ohio's former sex-offender classification, registration, and community-notification provisions ("Megan's Law"), Am.Sub.H.B. No. 180, 146 Ohio Laws, Part II, 2560, enacted in 1996, amended in 2003 by Am. Sub.S.B. No. 5, 150 Ohio Laws, Part IV, 6556, effective July 1, 2007. Senate Bill 10's registration, classification, and community-notification provisions, including those regarding the classification of juveniles as Tier I, Tier II or Tier III sex offenders, became effective January 1, 2008.

{¶ 4} "Where an act of the General Assembly amends an existing section of the Revised Code \* \* \*, postpones the effective date of the amended section for [a certain period of time] after the effective date of the act, and repeals the 'existing' section in a standard form of

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repealing clause used for many years by the General Assembly for the purpose of complying with Section 15(D) of Article II of the Constitution of Ohio, the constitutionally mandated repealing clause must be construed to take effect upon the effective date of the amended section in order to prevent a hiatus in statutory law, during which neither the repealed section nor the amended section is in effect." *Cox v. Ohio Dept. of Transp.* (1981), 67 Ohio St.2d 501, 508, 424 N.E.2d 597.

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\*2 ¶ 5) The repealing clause of a statute does not take effect until the amended provisions of the act come into operation. See *id.*; *State v. Brown*, 8th Dist. No. 90798, 2009-Ohio-127, reversed in part on other grounds, *In re Sexual Offender Classification Cases*, 126 Ohio St.3d 322, 2010-Ohio-3753, 933 N.E.2d 801; *In re Carr*, 5th Dist. No. 08 CA 19, 2008-Ohio-5689; *In re Marcio A.*, 5th Dist. No.2007 CA 00149, 2008-Ohio-4523. Senate Bill 10's classification, registration, and community-notification provisions became effective on January 1, 2008. Prior to that date, including the period from Senate Bill 10's enactment to its January 1, 2008 effective date, Ohio's former sex-offender classification, registration and community-notification provisions were in effect. See *State v. Brown*, *supra*; *In re Carr*, *supra*; *In re Marcio A.*, *supra*.

¶ 6) Bruce S. committed his offense on September 1, 2007, prior to the effective date of Senate Bill 10's registration, classification, and community-notification provisions, and during the time that Megan's Law was in effect. Therefore, Senate Bill 10's classification, registration, and community-notification provisions may not be applied to him. See *State v. Williams*, *supra*. The judgment of the juvenile court classifying Bruce S. as a Tier III juvenile sex offender under Senate Bill 10 must be reversed, and this cause must be remanded for Bruce S.'s sexual-offender classification under Megan's Law.

¶ 7) Our disposition of this appeal renders Bruce S.'s four assignments of error moot. Therefore, we do not address them. The judgment of the trial court is reversed, and this cause is remanded for further proceedings consistent with law and this opinion.

¶ 8) We recognize that our opinion in this case is in conflict with the opinion rendered by the Eighth Appellate District in *State v. Scott*, 8th Dist. No. 91890, 2011-Ohio-6255, holding that Senate Bill 10's classification provisions may be constitutionally applied to a sex offender who had committed his offenses during the period from July 1, 2007 through August 31, 2007. Therefore, pursuant to Section 3(B)(4), Article IV, of the Ohio Constitution, we sua sponte certify a conflict to the Ohio Supreme Court for review and final determination.

¶ 9) We certify this question to the Supreme Court of Ohio: May Senate Bill 10's classification, registration, and community-notification provisions be constitutionally applied to a sex offender who had committed his sex offense between the July 1, 2007, repeal of Megan's Law and the January 1, 2008, effective date of Senate Bill 10's classification, registration, and community-notification provisions?

Judgment reversed and cause remanded.

SUNDERMANN, P.J., CUNNINGHAM and FISCHER, JJ.

Please note:

The court has recorded its own entry this date.

### Parallel Citations

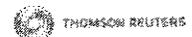
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**APPENDIX**

**B-1**

State v. Scott

2011 WL 6150058

Court of Appeals of Ohio, Eighth District, Cuyahoga County. December 8, 2011 Slip Copy 2011-Ohio-6255

CHECK OHIO SUPREME COURT RULES FOR REPORTING OF OPINIONS AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio,  
Eighth District, Cuyahoga County.

STATE of Ohio, Plaintiff–Appellee

v.

Joseph SCOTT, Defendant–Appellant.

No. 91890. Decided Dec. 8, 2011.

Criminal Appeal from the Cuyahoga County Court of Common Pleas, Case No. CR–505742.

**Attorneys and Law Firms**

Robert Tobik, Chief Public Defender, by John T. Martin, Assistant Public Defender, Cleveland, OH, for appellant.

Joseph Scott, Mansfield, OH, pro se.

William D. Mason, Cuyahoga County Prosecutor, by Pinkey S. Carr, Diane Smilanick, Assistant Prosecuting Attorneys, Cleveland, OH, for appellee.

Before: S. GALLAGHER, J., KILBANE, A.J., and BLACKMON, J.

**Opinion**

SEAN C. GALLAGHER, J.

\*1 ¶ 1 This appeal is before this court on remand from the Ohio Supreme Court for application of *State v. Williams*, 129 Ohio St.3d 344, 2011–Ohio–3374, 952 N.E.2d 1108, and *State v. Dunlap*, 129 Ohio St.3d 461, 2011–Ohio–4111, 953 N.E.2d 816. *State v. Scott*, 130 Ohio St.3d 260, 2011–Ohio–5343, — N.E.2d —.

¶ 2 In *State v. Scott*, Cuyahoga App. No. 91890, 2010–Ohio–3057, this court affirmed Scott's convictions of gross sexual imposition and attempted rape. The Ohio Supreme Court accepted review on propositions of law VII ("Gross sexual imposition against a child under 13 is not a strict liability offense. The act of sexual contact must be recklessly performed.") and IX ("The Adam Walsh Act does not apply to persons whose offenses were committed prior to the AWA's effective date"). The Ohio Supreme Court has remanded the case to this court for application of the *Williams* and *Dunlap* decisions.

¶ 3 In *Williams*, the court held as follows: "S.B. 10, as applied to defendants 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." (Emphasis added.) *Id.* at ¶ 20. S.B. 10, a.k.a. the Adam Walsh Act ("the AWA"), was enacted on June 27, 2007, and made effective on January 1, 2008.

¶ 4 Here, the subject offenses took place during the date range of July 1, 2007 through August 31, 2007. Scott argues that he cannot be classified as a sex offender because his offenses occurred between the repeal of Ohio's Megan's Law and the effective date of the AWA, thereby evading Ohio's sexual registration laws. We disagree.

¶ 5 Consistent with the holding in *Williams*, we find Scott's classification under the AWA was constitutional because the offenses took place after the "enactment" of S.B. 10 in June 2007. Therefore, we uphold his sex-offender classification under the AWA.

{¶ 6} In *Dunlap*, the court addressed the mens rea element of gross sexual imposition involving victims under 13 years of age. The court held that "the applicable mens rea of sexual contact, as defined in R.C. 2907.01(B), is purpose." *Id.* at ¶ 26. The court recognized its holding in *State v. Horner*, 126 Ohio St.3d 466, 2010-Ohio-3830, 935 N.E.2d 26, ¶ 45, that "when the indictment fails to charge the mens rea of the crime, but tracks the language of the criminal statute describing the offense, the indictment provides the defendant with adequate notice of the charges against him and is, therefore, not defective." *Id.* at ¶ 17. The court found that "Dunlap's indictment tracked the language of R.C. 2907.05(A)(4), so, pursuant to *Horner*, even if the indictment failed to charge a mens rea, it was not defective." *Id.* Because the indictment was not defective and the jury was properly instructed on the element of sexual contact as set forth in R.C. 2907.01(B), the court found the trial court did not err. *Id.* at ¶ 27. A review of the indictment on Count 16 for gross sexual imposition reflects that it tracked the language of R.C. 2907.05(A)(4). Further, the jury was instructed on the element of sexual contact and provided the definition set forth in R.C. 2907.01(B). Consistent with *Dunlap*, we find the indictment herein was not defective, the jury was properly instructed, and the trial court did not err.

\*2 {¶ 7} Consistent with our decision herein, we modify our prior opinion. The judgment of the trial court remains affirmed.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, A.J., and PATRICIA ANN BLACKMON, J., concur.

#### Parallel Citations

2011 -Ohio- 6255

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