

ORIGINAL

IN THE SUPREME COURT OF OHIO

IN RE D.J.S.

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Case No. 2008-1624

On Appeal from the
Allen County Court of Appeals
Third Appellate District

C.A. Case No. 1-07-58

MOTION TO ENFORCE STAY

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FILED
FEB 03 2012
CLERK OF COURT
SUPREME COURT OF OHIO

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MOTION TO ENFORCE STAY

D.J.S. respectfully requests that this Court order the Ohio Attorney General and the sheriffs of the State of Ohio to comply with this Court's stay of mandate entered in this case. (Exhibit A). 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, following *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, this Court found that the retroactive application of S.B. 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.*, 130 Ohio St.3d 257, 2011-Ohio-5342, ¶1. In this case, this Court reversed D.J.S.’s classification under the authority of *Williams* and remanded his case to the Allen County Juvenile Court for application of *Williams*. (Exhibit B). On December 21, 2011, this Court granted D.J.S.’s request for a stay of its mandate, pending the outcome of *In re J.V.*, 2011-0107, discretionary appeal accepted 128 Ohio St.3d 1499, 2011-Ohio-2420 (May 25, 2011). (Exhibit A).

Despite this Court’s decisions in *Williams*, this case, and the stay, the Ohio Attorney General has sent a letter to juvenile offender registrants, classifying them as follows:

After examining your records, your offender classification has been switched back to your original Megan’s Law classification. You will now be required to register for the duration and frequency previously determined by your prior judicial order. According to our records, your next periodic registration date will be: [DATE].

(Exhibit C).¹

For the reasons that follow, D.J.S. respectfully requests that this Court direct the Ohio Attorney General and the Ohio sheriffs to comply with this Court’s December 21, 2011 stay, remove D.J.S. from the sex offender registry pending the outcome of *In re J.V.*, and enjoin the Ohio Attorney General from placing him back on the registry until after the stay is lifted and if the matter is remanded to the Allen County Juvenile Court, if appropriate, to conduct a classification hearing in D.J.S.’s case.

¹ Exhibit C is a sample of a letter that was sent to a juvenile offender registrant. (Any personal information has been redacted.) The Office of the Ohio Public Defender has requested a copy of every letter that was mailed to juvenile registrants by the Ohio Attorney General, including D.J.S.

A. D.J.S. has never had a Megan’s Law Classification

The Ohio Attorney General’s letter informed children like D.J.S. that their classification had been “switched back” to their prior Megan’s Law classification. (Exhibit C). However, the record in this case reflects that D.J.S. was classified as a juvenile offender registrant only after S.B. 10 went into effect. In fact, his claim before this Court was that his classification was unconstitutional, as his offense pre-dated the enactment of S.B. 10. As such, there is no Megan’s Law classification for D.J.S. to have been “switched back” to, and no previously ordered registration terms with which he can comply.

When the Ohio Public Defender contacted the Ohio Attorney General about the letters and new classifications, the Attorney General informed the Ohio Public Defender that, following *Williams* and *D.J.S.*, the Attorney General changed all of the juvenile offender registrants that they had determined to be affected by those decisions, to sexually oriented offenders based on their prior classifications.² (Exhibit D, p.2). This “reclassification” is erroneous because the record in this case reflects that the Allen County Juvenile Court’s August 1, 2007 hearing was conducted solely according to the requirements of S.B. 10, not Megan’s Law. The juvenile court never made a determination under Megan’s Law that D.J.S. was a juvenile offender registrant. As such, the Attorney General’s claim that D.J.S. is merely being returned to what the Allen County Juvenile Court found him to be prior to the enactment of S.B. 10, is inaccurate.³

² The Attorney General states that any youth who was previously given an enhanced “sexual predator” or “habitual offender” label was returned to their respective classifications. (Exhibit D, p.2).

³ The Attorney General’s letter contains other inaccuracies, such as the duration of registration for juveniles. The letter states that Tier I juvenile offenders register annually for 15 years; Tier II juvenile offenders register for 25 years; and Tier III juvenile offenders register for life. (Exhibit D). But, pursuant to R.C. 2950.07, Tier I juvenile offenders must register for 10 years, and Tier II juvenile offenders must register for 20 years.

B. The Ohio Attorney General's classification of D.J.S. is an improper exercise of the Attorney General's authority

This Court expressly held that the proper remedy in D.J.S.'s case is for him to receive a new classification hearing in juvenile court, according to the law in effect at the time of D.J.S.'s offense. (Exhibit B, ¶1). The law in effect at the time of D.J.S.'s offense would require the juvenile court to conduct a two-step hearing at which it would first determine, based on a list of statutory factors, whether D.J.S. should have to register at all. Former R.C. 2152.83. (Enacted January 1, 2002; Repealed July 1, 2007). Thereafter, if the court were to determine that D.J.S. was going to be a juvenile offender registrant, it would then make a separate finding to designate his registration level. *Id.*

Under Megan's Law there was no provision for the Attorney General to participate in this judicial determination. See former R.C. 2950.01-2950.99 (Enacted January 1, 2002; Repealed July 1, 2007). And, this Court did not grant the Ohio Attorney General the authority to classify D.J.S. or any other youth as a juvenile offender registrant following this Court's decisions in *Williams, D.J.S.*, and its progeny. In fact, in *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424 this Court found that the Ohio Attorney General expressly lacks this authority.

Specifically, in *Bodyke* this Court found that R.C. 2950.031 and 2950.032, which expressly granted the Attorney General the authority to reclassify persons by letter following the enactment of S.B. 10, to be unconstitutional, as those sections violated the Separation of Powers Clause of the Ohio Constitution. *Id.*, at paragraph two of the syllabus. This Court found that:

Our Constitution and case law make undeniably clear that the judicial power resides exclusively in the judicial branch. *Ex parte Logan Branch of State Bank of Ohio* (1853), 1 Ohio St. 432, 434. The judicial power of the state is vested exclusively in the courts. Section 1, Article IV, Ohio Constitution. The power to review and affirm, modify, or reverse other courts' judgments is strictly limited to appellate courts. Section 3(B)(2), Article IV, Ohio Constitution. The AWA intrudes on that exclusive role and thus violates the separation-of-powers doctrine.

Moreover, once the final judgment has been opened, the AWA requires that the attorney general “shall determine” the new classifications of offenders and delinquent children who were classified by judges under the former statutes. R.C. 2950.031(A)(1) and 2950.032(A)(1)(a) and (b). In doing so, it violates a second prohibition by assigning to the executive branch the authority to revisit a judicial determination.

Thus, we conclude that R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders who have already been classified by court order under former law, impermissibly instruct the executive branch to review past decisions of the judicial branch and thereby violate the separation-of-powers doctrine.

Id. at ¶¶58-60. Therefore, under the Separation of Powers Clause of the Ohio Constitution and this Court’s precedent in *Bodyke*, the Ohio Attorney General expressly lacks the authority to classify or reclassify any juvenile whose case was reversed and remanded under the authority of *Williams*.

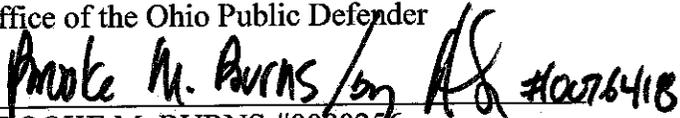
Moreover, and contrary to the Attorney General’s assertion, the Allen County Juvenile Court’s determination that D.J.S. was a juvenile offender registrant under S.B. 10 may not be used to predict what classification the juvenile court will impose on remand. (See exhibit D). This is because, unlike adult offender registrants, juveniles with adjudications for sexually oriented offenses are not classified by operation of law, either under Megan’s Law or S.B. 10. Former R.C. 2950.03–2950.11 (Enacted January 1, 2002, Repealed July 1, 2007). Further, when this Court invalidated D.J.S.’s classification in this case, it found the entire classification unconstitutional, not just the tier determination. (Exhibit B). Accordingly, a new court hearing must be conducted before D.J.S. can be required to register as a juvenile offender registrant. Further, only the Allen County Juvenile Court will be authorized to enter a classification order for D.J.S., if and when this Court’s December 21, 2011 stay is lifted.

CONCLUSION

For the foregoing reasons, D.J.S. respectfully requests that this Court direct the Ohio Attorney General and the Ohio sheriffs to comply with this Court's December 21, 2011 stay, remove D.J.S. from the sex offender registry pending the outcome of *In re J.V.*, and enjoin the Ohio Attorney General from placing him back on the registry until after the stay is lifted and if the matter is remanded to the Allen County Juvenile Court, if appropriate, to conduct a classification hearing in D.J.S.'s case.

Respectfully submitted,

Office of the Ohio Public Defender


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COUNSEL FOR D.J.S.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Motion to Enforce Stay** was forwarded by regular U.S. Mail this 3rd day of February, 2012, to the office of Juergen J. Waldick, Allen County Prosecutor, 204 N. Main Street, Suite 302, Court of Appeals Building, Lima, OH 45801. A courtesy copy has also been forwarded this day to Ohio Attorney General Mike DeWine, 30 E. Broad Street, 17th Floor, Columbus, Ohio 43215.


BROOKE M. BURNS #0080256
Assistant State Public Defender

COUNSEL FOR D.J.S.

The Supreme Court of Ohio

FILED

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CLERK OF COURT
SUPREME COURT OF OHIO

In the Matter of: D. J. S., Alleged Delinquent
Child

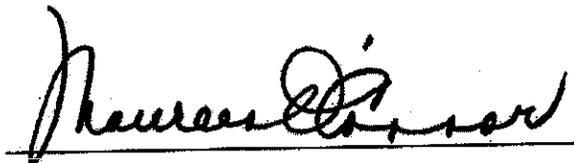
Case No. 2008-1624

RECONSIDERATION ENTRY

Allen County

It is ordered by the Court that the motion for reconsideration is denied and the alternative motion to stay this Court's October 20, 2011 mandate is granted, and the issuance of the mandate in this case is held for the decision in Supreme Court Case No. 2011-0107, *In re J.V.*

(Allen County Court of Appeals; No. 10758)



Maureen O'Connor
Chief Justice

EXHIBIT

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The Supreme Court of Ohio

FILED

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CLERK OF COURT
SUPREME COURT OF OHIO

In the Matter of: D. J. S., Alleged Delinquent
Child

Case No. 2008-1624

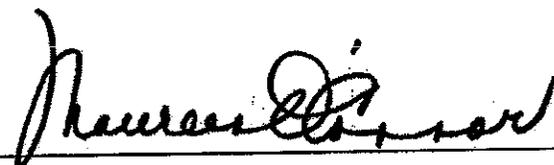
JUDGMENT ENTRY

APPEAL FROM THE
COURT OF APPEALS

This cause, here on appeal from the Court of Appeals for Allen County, was considered in the manner prescribed by law. The judgment of the court of appeals is reversed and the cause is remanded 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 Allen 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 Allen County for entry.

(Allen County Court of Appeals; No. 10758)



Maureen O'Connor
Chief Justice

EXHIBIT

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NOTICE OF SEX OFFENDER REGISTRATION MODIFICATION

On July 13, 2011, the Ohio Supreme Court issued a ruling in *State v Williams* holding that Ohio's version of the Adam Walsh Act (Senate Bill 10) is unconstitutional as applied to offenders who committed their offenses prior to July 1, 2007. Any offenders who committed their offenses prior to the effective date of Senate Bill 10 will be returned to their prior Megan's Law classification.

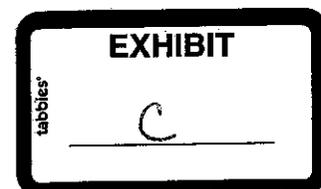
After examining your records, your offender classification has been switched back to your original Megan's Law classification. You will now be required to register for the duration and frequency previously determined by your prior judicial order. According to our records, your next periodic registration date will be:

**CONTACT YOUR LOCAL SHERIFF'S OFFICE TO CONFIRM
THAT YOUR REGISTRATION HAS BEEN UPDATED.**

Sincerely,



Steven Raubenolt
Deputy Superintendent of BCI&I





MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Administration
Office 614-466-4320
Fax 614-466-5087

30 E. Broad Street, 17th Fl.
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

January 26, 2012

The Honorable Timothy Young
Ohio Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215

Mr. Young:

Thank you for your inquiry about juvenile sex offender reclassification. For any juvenile affected by the *Williams* decision, my Office has assigned him a Megan's Law classification based on legal determinations issued by the juvenile court overseeing his case.

Since 2002, Ohio has employed a two-step process to classify juvenile offenders who commit sexually oriented or child-victim offenses. The first step has always been the same: Under R.C. 2152.82 and 2152.83, the juvenile court determines whether the child is a "juvenile offender registrant." If the child was 13 or younger at the time of his offense, the court may not impose this designation. If the child was 14 or 15 at the time of his offense, the juvenile court has discretion on whether to impose the designation. And if the child was 16 or 17 at the time of his offense, or if the child is a repeat offender, this "juvenile offender registrant" designation is mandatory.

The second step has changed over the years. Under Ohio's first sex offender registration statute, Megan's Law, any juvenile classified as a "juvenile offender registrant" had to register annually with his county sheriff for 10 years. But after an evidentiary hearing and consideration of other statutory factors, a juvenile court could impose an enhanced designation—"habitual offender" or "sexual predator"—on the juvenile. A habitual offender had to register annually with his county sheriff for 20 years, and a sexual predator had to register every 90 days with his county sheriff for life.

The recently enacted Adam Walsh Act adopted a more formalistic procedure at this second step: Any juvenile classified by the court as a "juvenile offender registrant" then receives a second classification—Tier I, Tier II, or Tier III—based entirely on his offense. Tier I juvenile offenders register annually for 15 years; Tier II juvenile offenders register every 180 days for 25 years; and Tier III juvenile offenders register every 90 days for life.

As you know, the Ohio Supreme Court in *Williams* held that any sex offender who committed his offense before January 1, 2008, is subject only to Megan's Law, not the Adam Walsh Act. The Court then applied its holding to juvenile offenders in *In re D.S.*

In response to those decisions, my Office took the following actions: (1) We identified those juvenile offenders on Ohio's sex offender registry who committed their offenses before January 1, 2008; (2) we reviewed the juvenile court's findings and orders with respect to each offender to determine whether the court had classified him as a "juvenile offender registrant" under R.C.

EXHIBIT

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D

2152.82 and 2152.83; and (3) we determined whether the juvenile court had imposed an enhanced "habitual offender" or "sexual predator" classification under Megan's Law.

If the court did not impose a "juvenile offender registrant" designation on the juvenile, he has no duties under Megan's Law, and he is not listed as sex offender. If a court has determined the juvenile to be a "juvenile offender registrant," but has not imposed any enhanced Megan's Law classification, we instructed the juvenile to register annually with his county sheriff for a period of ten years. If a court has imposed an enhanced "habitual offender" or "sexual predator" designation, we instructed the juvenile of those additional registration duties.

Please let me know if you have further questions about our efforts to implement the *Williams* decision. Also, if you think we have made erroneously classified a particular offender in this process, please contact Assistant Attorneys General Justin Hykes (740-845-2716 or justin.hykes@ohioattorneygeneral.gov) and Erin Reed (740-845-2204 or erin.reed@ohioattorneygeneral.gov).

Very respectfully yours,

A handwritten signature in black ink, appearing to read "Mike DeWine", written in a cursive style.

Mike DeWine
Attorney General