

ORIGINAL

In the
Supreme Court of Ohio

IN RE D.J.S.,

: Case No. 2008-1624
:
:
: On Appeal from the
: Allen County
: Court of Appeals,
: Third Appellate District
:
: Court of Appeals Case
: No. 1-07-58

OHIO ATTORNEY GENERAL MICHAEL DEWINE'S
RESPONSE TO MOTION TO ENFORCE STAY

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FILED

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CLERK OF COURT
SUPREME COURT OF OHIO

**OHIO ATTORNEY GENERAL MICHAEL DEWINE'S RESPONSE TO
MOTION TO ENFORCE STAY**

The Clerk of Court has informed the Attorney General that D.J.S. has filed a "motion to enforce stay," seeking an order (1) compelling the Attorney General to comply with the stay of mandate entered in this case; (2) directing the Attorney General remove D.J.S.'s classification under Megan's Law from the sex offender registry; and (3) enjoining the Attorney General from placing D.J.S. on the registry until further order of the Court. The Court should deny the motion.¹

As a threshold matter, this is an appellate proceeding between D.J.S. and the Allen County Prosecutor. The Attorney General is not a party to this case. D.J.S. cannot use a post-judgment motion in an appellate proceeding as a vehicle to litigate disputes he might have with a non-party, much less obtain an injunction against that non-party.

And even if the Attorney General were treated as a party here, no enforcement can be ordered because his Office did not violate the stay entered by this Court. On October 20, 2011, this Court determined that D.J.S.'s classification under the Walsh Act was unconstitutional, and it ordered the Allen County Juvenile Court to carry its judgment into execution. D.J.S. sought a stay of this mandate, claiming that the juvenile court lacked jurisdiction to conduct any further proceedings because he is now over the age of 21. On December 21, 2011, the Court stayed its mandate pending resolution of another case, *In re J.V.*, No. 2011-0107, that raises the same jurisdictional question.

¹ The Attorney General is not a party to this case. Although responses to motions are limited to parties, *see* S.Ct. Prac. 14.4(B), the Clerk's Office informed the Attorney General that it would accept this response for filing.

No violation of the stay has occurred. To the Attorney General's knowledge, no further proceedings have occurred in the Allen County Juvenile Court. And no portion of the Court's mandate or the accompanying stay is directed at the Attorney General.

In truth, D.J.S.'s objection does not relate to the stay at all. It implicates a different issue—the Attorney General's efforts to implement this Court's holding in *State v. Williams*, 129 Ohio St. 3d 344, 2011-Ohio-3374.

In *Williams*, the Court held that any sex offender who committed his offense before January 1, 2008, is subject to registration under Megan's Law, not the Adam Walsh Act. Consistent with that holding, the Attorney General's Office terminated the Walsh Act classifications for all eligible juvenile offenders. The Attorney General's Office then reclassified juvenile offenders under Megan's Law based on the juvenile courts' legal findings and orders. If the relevant juvenile court previously determined an offender to be a "juvenile offender registrant," the Office instructed that juvenile to register annually with his county sheriff for a period of ten years. And if the juvenile court had previously imposed a "habitual offender" or "sexual predator" designation, the Office instructed that juvenile of his additional registration duties.

D.J.S.'s counsel has objected to this process, claiming that the Attorney General has misinterpreted this Court's disposition in *Williams* and that he lacked authority to restore Megan's Law classifications to these juvenile offenders. D.J.S.'s counsel has further asked the Attorney General's Office to remove Megan's Law classifications—and the accompanying registration duties—for all juvenile offenders affected by *Williams*.

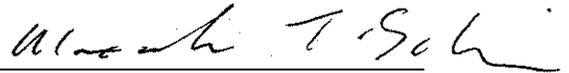
The Attorney General respectfully disagrees with that position. And he has suggested that D.J.S.'s counsel consider proper mechanisms—such as the filing of a mandamus complaint

against his Office—that would permit efficient resolution of the legal dispute. But for the reasons discussed above, this is the wrong forum to do so.

The Court should deny the motion to enforce stay.

Respectfully submitted,

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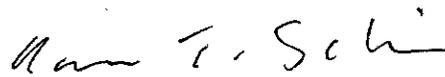
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Response to Motion to Enforce Stay was served by

U.S. mail this 13th day of February, 2012 upon the following:

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