

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO	:	Case No. 12-1074
Plaintiff-Appellant,	:	On Appeal from the Hamilton
	:	County Court of Appeals,
v.	:	First Appellate District
ERNEST HARRIS	:	Court of Appeals
Defendant-Appellee.	:	Case Numbers C-100243 & C-100273

MEMORANDUM OF APPELLEE IN OPPOSITION TO JURISDICTION

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<i><u>Appellee’s Position on Appellant’s Proposition of Law No. 1:</u> The registration requirements of Senate Bill 10 were severed by <i>State v. Williams</i> as a remedy for constitutional violations and a defendant may not be convicted of violating them, particularly when the state failed to allege or prove at trial that the defendant had an alternate duty to register under prior law.</i>	
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STATEMENT IN OPPOSITION TO JURISDICTION

After a jury trial, the Defendant-Appellee, Ernest Harris, was convicted of violating the sex offender registration provisions of Am.Sub.S.B. No. 10 (“Senate Bill 10”) and was sentenced to six years’ incarceration. The Court of Appeals for the First Appellate District of Ohio (“Court of Appeals”) applied this Court’s decisions in *State v. Bodyke*¹ and *State v. Williams*² to reverse Mr. Harris’s conviction and discharge him from prison.

This appeal presents no substantial constitutional question, as the important constitutional questions have already been decided in *Bodyke* and *Williams* – the reclassification provisions of Senate Bill 10 are unconstitutional. This case does not present a question of great public or great general interest and is merely a routine application of the *Bodyke* and *Williams* decisions to Mr. Harris’s case. Furthermore, the First District’s decision is of limited application because Mr. Harris is one of a small number of defendants who have been convicted of failure to register as a sex offender through a jury trial as opposed to a guilty plea.

This Court should decline jurisdiction because this case does not present a substantial constitutional question or a question of public or great general interest warranting this Court’s review. “In cases of public or great general interest, the Supreme Court may direct any court of appeals to certify its record to the Supreme Court, and may review and affirm, modify, or reverse the judgment of the court of appeals.”³ Whether the issues argued before the Supreme Court of Ohio are indeed questions of public or great general interest “rests within the discretion of the Court.”⁴ The Supreme Court’s role as a court of last resort “is not to serve as an additional court

¹ *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753.

² *State v. Williams*, (2011) 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108.

³ Section 2(B)(2)(e), Article IV, Ohio Constitution.

⁴ *Williamson v. Rubich* (1960), 171 Ohio St. 253, 254, 12 O.O.2d 379, 168 N.E.2d. 876.

of appeals on review, but rather to clarify rules of law arising in courts of appeals that are matters of public or great general interest."⁵

This Court should decline jurisdiction because any and all constitutional questions surrounding the pertinent issues were resolved in *State v. Bodyke*⁶. More specifically, this Court held in *Bodyke* that the reclassification under Senate Bill 10 was unconstitutional if offenders had a duty to report from a prior court order under Megan's Law. Further, any reporting violation based on a Senate Bill 10 registration requirement that is inapplicable to the defendant is unlawful.⁷

Likewise, in *State v. Page*⁸, this Court presciently held that the reclassification cannot serve as the basis for reporting violations if an offender had a pre-existing duty by a court order to register under Megan's Law.⁹ The majority noted that *Bodyke* does not create "a fictitious distinction between an unlawful reclassification 'that imposes a more onerous verification requirement' and a reclassification that does not impose heightened verification requirements. *Bodyke* deemed reclassifications under Senate Bill 10 unlawful, the only condition being that the offender has 'already been classified by court order under former law.'"¹⁰

This distinction is important. Once offenders already under the obligation to report pursuant to Megan's Law were reclassified pursuant to R.C. 2950.031 and 2950.032, their duties to report were derived from Senate Bill 10. The violations for an offender's failure to register pursuant to R.C. 2950.04(A)(E) were based on the duty to register unlawfully imposed upon those already subject to reporting requirements through a prior court order.

⁵ *State v. Bartrum*, 121 Ohio St.3d 148, 2009-Ohio-355, 902 N.E.2d 961, at P 31 (O'Donnell, J., dissenting).

⁶ *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶ 22.

⁷ *State v. Gingell*, Slip Opinion No. 2011-Ohio-1481 (reversing defendant's conviction for failing to verify residency under the heightened AWA standards based on *Bodyke*).

⁸ Cuyahoga App. No. 94369, 2011-Ohio-83

⁹ *Id.* at ¶ 11.

¹⁰ *Id.* at ¶ 10, fn. 1.

In the instant case, neither the trial court nor Mr. Harris had the benefit of the *Bodyke* decision during the pendency of the trial court's proceedings. Mr. Harris's reclassification under Senate Bill 10 is contrary to the law and, consequently, Mr. Harris's conviction arising from reporting violations under Senate Bill 10 is unlawful.¹¹

This case is not one of public or great general interest. The Court of Appeals decision applies only to Mr. Harris and his unique set of facts: Mr. Harris never accepted a plea agreement but instead was convicted by a jury. The scope of the Court of Appeals' ruling is limited to Mr. Harris's particular circumstance.

The State of Ohio asserts that this case should be accepted and held for consideration in *State v. Brunning*¹² and *State v. Bowling*¹³. Mr. Harris's case, however, differs from *Brunning* and *Bowling* in two important ways. First, Mr. Harris was convicted of violating the registration provisions of Senate Bill 10 after a jury trial. Therefore, he did not waive any defects in the indictment as the defendants in *Brunning* and *Bowling* did by pleading guilty. Second, while the State of Ohio argues that Mr. Harris had a duty to register under Megan's Law, there is insufficient evidence in the record to prove that he had such a duty. For these reasons, this Court should not exercise jurisdiction over this case.

STATEMENT OF THE CASE

This is an appeal from the Court of Appeals after Mr. Harris had been convicted by a jury in the Hamilton County Court of Common Pleas ("trial court") for failing to register as a sex offender. The Court of Appeals initially affirmed the trial court's judgment against Mr. Harris. Subsequently, however, this Court accepted Mr. Harris's appeal and remanded the matter to the

¹¹ *Gingell*, 2011-Ohio-1481; see, also, *State v. Smith*, Cuyahoga App. No. 92550, 2010-Ohio-2880, 429; *State v. Patterson*, Cuyahoga App. No. 93096, 2010-Ohio-3715; *State v. Jones*, Cuyahoga App. No. 93822, 2010-Ohio-5004.

¹² *State v. Brunning*, 129 Ohio St.3d 1488, 2011-Ohio-5129, 954 N.E.2d 661.

¹³ *State v. Bowling*, 131 Ohio St.3d 1437, 2012-Ohio-331, 960 N.E.2d 986.

Court of Appeals for application of *State v. Williams*¹⁴. In accordance with this Court's decision in *Williams*, the Court of Appeals vacated Mr. Harris's conviction and ordered that he be discharged from custody. The State of Ohio now appeals and asks this Court to exercise its jurisdiction and reinstate Mr. Harris's conviction.

STATEMENT OF FACTS

Mr. Harris was convicted of rape on January 7, 1983 and was sentenced to an indefinite term of 7- 25 years in prison.

Mr. Harris was serving time in prison in August of 2008. Upon Mr. Harris's release, a records manager at the prison notified Mr. Harris that he had been classified as a Tier III sex offender under Senate Bill 10 and was subject to a duty to register.¹⁵ Mr. Harris did not register his address with the sheriff's office and was indicted on December 3, 2009 for failing to register as a sex offender in violation of R.C. 2950.04(A)(E), as amended by Senate Bill 10.

Mr. Harris proceeded to a jury trial during which the trial court's jury instructions referenced the registration duties of a Tier III sex offender. Mr. Harris was found guilty by the jury, convicted of failure to register, and sentenced to six years' incarceration.

Because Mr. Harris was indicted, tried, and convicted for violating the registration provisions of Senate Bill 10 while he was unconstitutionally classified as a Tier III sex offender, the Court of Appeals reversed Mr. Harris's conviction and discharged him from custody. In its June 6, 2012 judgment entry ordering that Mr. Harris's conviction be vacated, the Court of Appeals followed this Court's 2011 decision in *State v. Williams* which held that the registration provisions of Senate Bill 10 violate the constitutional prohibition on retroactive punitive laws.

¹⁴ *State v. Williams*, (2011) 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108.

¹⁵ At trial, Mr. Harris testified that the prison staff did not notify him of his Tier III classification or his duty to register.

APPELLEE'S RESPONSE TO APPELLANT'S PROPOSITIONS OF LAW

Appellee's Position on Appellant's Proposition of Law No. 1: The registration requirements of Senate Bill 10 were severed by *State v. Williams* as a remedy for constitutional violations and a defendant may not be convicted of violating them, particularly when the state failed to allege or prove at trial that the defendant had an alternate duty to register under prior law.

The Court of Appeals correctly reversed the judgment of the trial court and ordered that Mr. Harris be discharged from custody. According to Section 28, Article II of the Ohio Constitution, Senate Bill 10's classification, registration, and community-notification provisions may not apply to defendants such as Mr. Harris whose crimes were committed prior to its enactment.¹⁶ Because Mr. Harris "was indicted, tried, and convicted for violating Senate Bill 10's registration requirements while he was unconstitutionally classified as a Tier III sex offender,"¹⁷ the Court of Appeals found that Mr. Harris's conviction must be vacated.

While the Appellant asserts that Mr. Harris may have a duty to register under former Megan's Law¹⁸, the record clearly shows that Mr. Harris was never notified of any such duty and was never charged with, tried, or convicted of any Megan's Law violation.¹⁹ Adjudication of this matter is confined to the application of the law in which Mr. Harris was charged with violating. Upon this Court's request, the Court of Appeals correctly applied this Court's decision in *Williams* and concluded that Mr. Harris's conviction was unconstitutional.

There was insufficient evidence admitted at trial to support any finding that Mr. Harris was subject to a duty to register under Megan's Law. While the defendants in *Brunning* and *Bowling* were required to register under Megan's Law because they had been judicially classified as sex offenders, there was no evidence at trial showing that Mr. Harris was judicially classified under

¹⁶ *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108.

¹⁷ *State v. Harris*, 1st Dist. Nos. C-100243 & C-100273, 2012-Ohio-2460.

¹⁸ 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.

¹⁹ *State v. Harris*, 1st Dist. Nos. C-100243 & C-100273, 2012-Ohio-2460.

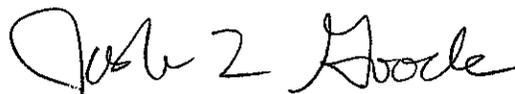
Megan's Law. Also, since no evidence was admitted at trial which demonstrated that Mr. Harris was incarcerated for a sex offense on January 1, 1996, the State has not proven that the registration duty set forth in Megan's Law attached to him.

For these reasons, and because this case is limited to Mr. Harris's unique set of facts, this Court should not disturb the Court of Appeals' decision and should not exercise jurisdiction.

CONCLUSION

This case does not raise a matter of public or great general interest or a substantial constitutional question. The Court of Appeals' decision coincides with the current state of the law and Appellant's Memorandum in Support of Jurisdiction does not demonstrate that the Court of Appeals' decision has any impact beyond this specific case. For the foregoing reasons, this Court should decline to exercise jurisdiction over this appeal.

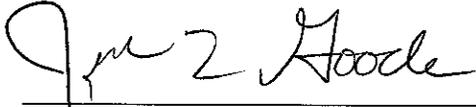
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum in Opposition to Jurisdiction has been served on Joseph T. Deters, Hamilton County Prosecutor, and Paula E. Adams, Assistant Prosecuting Attorney, Attorneys for the Plaintiff-Appellee, State of Ohio, at 230 East Ninth Street, Suite 4000, Cincinnati, Ohio 45202, by ordinary United States mail on this 18th day of July, 2012.



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