

IN THE SUPREME COURT OF OHIO

12-1519

STATE OF OHIO,	: On Appeal from the Hamilton County
	: Court of Appeals,
Appellee,	: First Appellate District
	:
vs.	: Court of Appeals Case No. C 1100627
	:
DONTA CAMPBELL,	: Trial Court No. B-1101716
	:
Appellant.	:

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MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT DONTA CAMPBELL

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**THIS CASE INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS A  
CASE OF PUBLIC OR GREAT GENERAL INTEREST**

This case presents this Court with a substantial constitutional issue regarding the correct law to apply to Megan's Law offenders who violate their registration duties. Mr. Campbell is a Megan's Law offender who was wrongfully convicted of violating the Adam Walsh Act ("AWA") and punished under the new, enhanced penalties. Mr. Campbell objected to the indictment and the enhanced penalty because both are unconstitutionally retroactive and a double jeopardy violation. This Court has already accepted several cases to address these issues, and Mr. Campbell respectfully requests this Court to accept his case and stay briefing pending this Court's decisions in *State v. Brunning*, 2011-1066 and *State v. Howard*, 2011-2126.

However, Mr. Campbell's case also raises an additional issue that this Court has not yet addressed: When the penalty for a failure to comply with registration is included in the court ordered registration duties, can the legislature constitutionally modify that order? Mr. Campbell's judicial order includes notice that the penalty for a failure to register is a fifth degree felony, not a first degree felony. Because this Court reinstated that order in *State v. Bodyke*, any failure to register for Mr. Campbell should be a fifth degree felony. Moreover, *Bodyke* makes it crystal clear that the legislature does not have the power to modify this final court order. *Id.* at ¶ 67.

Mr. Campbell asked the trial court and the First District Court of Appeals to apply *Bodyke*, enforce his registration order, and dismiss the indictment that charged him with a first degree felony. Both courts refused and erroneously concluded that Mr. Campbell should be charged with a first degree felony because his duties did not change under AWA, and the violation occurred after the amended sentencing statute was enacted.

This significant issue must be addressed by this Court. Ohio has thousands of registered sex offenders, whose duties arose at varying times on and after July 1997. Many have court orders, like Mr. Campbell's, that include a penalty notification that is not being enforced. Applying the amended sentencing statute to Megan Law offenders substantially increases the penalty for a failure to comply with the registration duties. This Court should address this issue or reverse the First District on the authority of *Bodyke*.

### STATEMENT OF THE CASE AND FACTS

In 2002, Donta Campbell was convicted of rape. As part of his sentencing, the Court had a hearing to determine Mr. Campbell's classification and registration duties. After the hearing, the court ordered Mr. Campbell to register as a sexually oriented offender under Megan's Law for ten years and notified him of his specific duties. Most significantly, for purposes of this appeal, the court order notified Mr. Campbell that any failure to comply with his registration duties would constitute a felony of the fifth degree.

Mr. Campbell was indicted under R.C. 2950.05(F)(1) of a first degree felony for failing to notify the sheriff of a changed address. After initially pleading guilty to a second degree felony, he filed a motion and a supplemental motion to withdraw his plea challenging the application of amended Chapter 2950 to him in light of *State v. Gingell*, 128 Ohio St.3d. 444, 2011-Ohio-1481, 946 N.E.2d 192. After the court allowed him to withdraw his plea, he filed a motion to dismiss the indictment, again explaining that amended Chapter 2950 did not apply to him. Additionally, he asked the court to enforce his registration orders that required him to register under Megan's Law and included notice that a failure to comply with the registration duties would result in a fifth degree felony charge. The court denied the motion.

After this Court held that amended Chapter 2950 is unconstitutionally retroactive in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, Mr. Campbell filed a motion asking the court to reconsider dismissing the indictment based on *Williams*. After the court denied this motion, Mr. Campbell pled guilty to a second degree felony and was sentenced to prison for two years.

Mr. Campbell asked the First District Court of Appeals to vacate the conviction because: (1) *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶ 66, reinstated his judicial registration order, (2) Chapter 2950 is unconstitutionally retroactive under *State v. Williams*, and (3) the amended sentencing statute violates the double jeopardy clause. The First District Court of Appeals rejected these arguments and affirmed the trial court's judgment.

### **LAW AND ARGUMENT**

*Proposition of Law 1: Applying amended Chapter 2950 to Mr. Campbell violates the separation of powers doctrine under State v. Bodyke.*

This Court held that the application of amended Chapter 2950 violates the separation of powers doctrine in *State v. Bodyke*. *Bodyke*, at ¶ 67. To remedy this unconstitutional application, the Court severed R.C. 2950.031 and reinstated all offenders' court ordered duties, including Mr. Campbell. *Id.* at ¶ 66. Both of these remedies profoundly impact the manner in which Mr. Campbell can be charged with any violation of his registration duties.

First, R.C. 2950.031 was the sole triggering mechanism that allowed amended Chapter 2950 to apply to Mr. Campbell. It required the Attorney General to reclassify all offenders and notify them of their new classifications and duties as they "will exist under the changes that will be implemented on January 1, 2008, \*\*\*under Chapter 2950. of the Revised Code as so changed \*\*\*." R.C. 2950.031. Without this triggering statute, none of the changes to Chapter 2950 that were implemented on January 1, 2008 apply to Mr. Campbell. Thus the effect of the severance

is to prohibit the changes to Chapter 2950 that became effective on January 1, 2008 from applying to Mr. Campbell, including both amended R.C. 2950.05 and amended R.C. 2950.99.

Then this Court had to determine what version of Chapter 2950 applies to offenders like Mr. Campbell with court ordered duties. The Court answered that question by reinstating all judicial orders that were imposed under Megan's Law. In so doing, the Court made it clear that Megan's Law, not amended Chapter 2950, applies to Mr. Campbell, and that his court ordered obligations cannot be amended, changed, or modified by the legislature or the attorney general.

Mr. Campbell's court ordered registration duties require him to register under Megan's Law, so he can only be charged with violating Megan's Law, not AWA. More importantly, his judicial order also makes it clear that any registration violation is a fifth degree felony. Because *Bodyke* reinstated this order, any failure to register for Mr. Campbell must be charged under Megan's Law as a fifth degree felony.

As this Court explained in *State v. Gingell*, 128 Ohio St.3d 444, 2011-Ohio-1481, 946 N.E.2d 192, *Bodyke* reinstated offenders judicial registration orders under Megan's Law, "[t]herefore, the current version of R.C. 2950.06, \*\*\* does not apply to Gingell." *Id.* at ¶ 8. Since amended Chapter 2950 does not apply to Mr. Gingell, the Court vacated his conviction and specifically noted that Megan's Law would apply to any registration violation. *Id.*

Like Mr. Gingell, Mr. Campbell was indicted for violating amended R.C. 2950.05 which does not apply to him. Mr. Campbell was also charged with a first degree felony under amended R.C. 2950.99 which does not apply to him. His reinstated court order makes it clear that any registration violation must be charged under Megan's Law as a fifth degree felony. Ignoring Mr. Campbell's court order and applying amended Chapter 2950 to Mr. Campbell violates both *Bodyke* and *Gingell*.

This Court should reverse the First District, vacate the conviction, and hold that *Bodyke* requires that Mr. Campbell's judicial orders be enforced as written.

*Proposition of Law 2: Applying amended Chapter 2950 to Mr. Campbell violates the retroactivity clause.*

Mr. Campbell also sought to dismiss the indictment on the authority of *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108. In *Williams*, this Court again concluded that amended Chapter 2950 cannot be applied to individuals, like Mr. Campbell, who committed their sex offense before January 1, 2008. *Id.* at ¶ 21. Specifically, the Court concluded that Chapter 2950 violates Ohio's retroactivity clause because it is punitive. *Id.* at ¶¶ 16, 21. This decision impacts Mr. Campbell in three distinct ways (1) it reiterates that amended 2950.50 does not apply to him, (2) it reiterates that amended 2950.99 does not apply to him, and (3) it makes clear that any law that "imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction, and create[s] new burdens, new duties, new obligations, or new liabilities not existing at the time," is unconstitutionally retroactive.

Yet the First District Court of Appeals erroneously concluded that Mr. Campbell could be indicted under AWA because "Campbell had a duty under Megan's Law to provide written notice at least 20 days prior to an address change." *State v. Campbell*, 1st Dist. No. C-110627, 2012-Ohio-3332, ¶ 10. The court further erred by concluding amended R.C. 2950.99 applied to Mr. Campbell because his failure to register occurred after the statute's enactment. *Id.* at ¶ 12. But this interpretation ignores this Court's *Williams* holding and analysis. Because Mr. Campbell's sex offense predated January 1, 2008, *Williams* does apply to him and holds that amended 2950 is unconstitutionally retroactive and cannot apply to Mr. Campbell.

Moreover, when Mr. Campbell was initially ordered to register, any subsequent failure to comply with his duty was a fifth degree felony. Amended 2950.99 increased the penalty for a

failure to register from a fifth degree felony to a first degree felony, a new liability not existing at the time Mr. Campbell's registration duty was imposed. On its face, a retroactive application of R.C. 2950.99 reaches back and creates a new liability on the preexisting duty to register. Thus the First District Court of Appeals erred in concluding that applying the amended sentencing statute to a preexisting duty to register is not a retroactive application and this Court should reverse its decision and vacate Mr. Campbell's conviction.

*Proposition of Law 3: Applying amended 2950.99 to Mr. Campbell violates the double jeopardy clause.*

Article I, Section 10 of the Ohio Constitution provides that “[n]o person shall be twice put in jeopardy for the same offense.” The Double Jeopardy clause prohibits multiple punishments for the same offense. *State v. Gustafson* (1996), 76 Ohio St.3d 425, 432, 668 N.E.2d 435. The purpose of the Double Jeopardy Clause is to prohibit the state from seeking, in two or more separate proceedings, to impose punishment for a single offense. *Id.*

Applying amended R.C. 2950.99 to Mr. Campbell would punish him twice for his initial sex offense. The amended statute ties the penalty for a violation of the civil duty directly to the underlying sex offense. The sex offense is now an element of the registration offense that must be included in the indictment and proven beyond a reasonable doubt as part of the new criminal charge. The law imposes a harsher penalty on individuals like Mr. Campbell whose underlying sex offense is rape, a first degree felony. The intent and effect of the statute is to punish Mr. Campbell a second time for his underlying rape conviction.

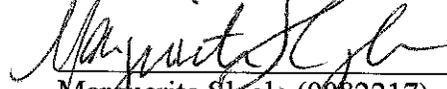
Put differently, registration is a civil duty and presumably all violators will be treated similarly. Now that the penalty is tied directly to the underlying sex offense, and the penalty is enhanced based solely on the sex offense, amended 2950.99 punishes Mr. Campbell again for the

sex offense in violation of Ohio's double jeopardy clause. Ohio Constitution, Article I, Section 10.

### CONCLUSION

This Court should accept jurisdiction over this case and stay briefing pending the decisions in *State v. Brunning*, 2011-1066 and *State v. Howard*, 2011-2126. In the alternative, Donta Campbell requests the opportunity for full briefing and oral argument on the significant issues presented.

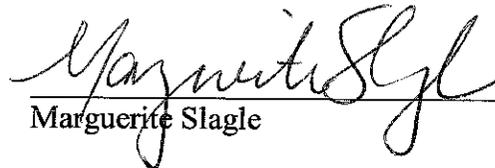
Respectfully submitted,



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### CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of Appellant Memorandum in Support of Jurisdiction was served by U.S. Mail upon Paula Adams, Assistant Prosecuting Attorney, Hamilton County Prosecuting Attorney's Office, 230 East Ninth Street, Suite 4000, Cincinnati, Ohio 45202, on this 6th day of September, 2012.



Marguerite Slagle

## Appendix

Judgment Entry from the First District Court of Appeals

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,

Plaintiff-Appellee,

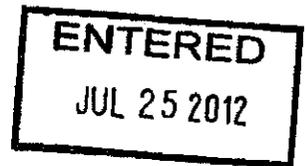
vs.

DONTA CAMPBELL,

Defendant-Appellant.

: APPEAL NO. C-110627  
: TRIAL NO. B-1101716

*JUDGMENT ENTRY.*



This cause was heard upon the appeal, the record, the briefs, and arguments.

The judgment of the trial court is affirmed for the reasons set forth in the Opinion filed this date.

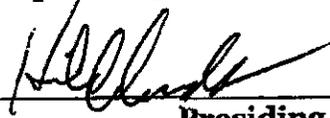
Further, the court holds that there were reasonable grounds for this appeal, allows no penalty and orders that costs are taxed under App. R. 24.

The Court further orders that 1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and 2) the mandate be sent to the trial court for execution under App. R. 27.

**To the clerk:**

**Enter upon the journal of the court on July 25, 2012 per order of the court.**

By: \_\_\_\_\_



Presiding Judge

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-110627
Plaintiff-Appellee,	:	TRIAL NO. B-1101716
vs.	:	<i>OPINION.</i>
DONTA CAMPBELL,	:	PRESENTED TO THE CLERK
Defendant-Appellant.	:	OF COURTS FOR FILING
		JUL 25 2012
		COURT OF APPEALS

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: July 25, 2012

*Joseph T. Deters*, Hamilton County Prosecuting Attorney, and *Paula E. Adams*,  
Assistant Prosecuting Attorney, for Plaintiff-Appellee,

*Ohio Justice & Policy Center* and *Marguerite Slagle*, for Defendant-Appellant.

Please note: This case has been removed from the accelerated calendar.



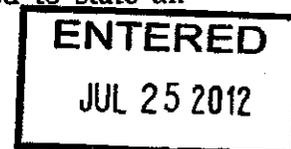
**FISCHER, Judge.**

***Facts and Procedure***

{¶1} On November 1, 2002, defendant-appellant Donta Campbell was convicted of rape. After a sex-offender-classification hearing under former R.C. Chapter 2950 (“Megan’s Law”), the trial court classified Campbell as a sexually oriented offender. See Am.Sub.H.B. No. 180, 146 Ohio Laws, Part II, enacted in 1996, amended in 2003 by Am.Sub.S.B. No. 5, 150 Ohio Laws, Part IV 6556. As a sexually oriented offender, Campbell was required to register for ten years and to verify his address annually. He was also required to notify the sheriff of any change of address. In 2007, the General Assembly enacted Am.Sub.S.B. No. 10 (“Senate Bill 10”) to implement the federal Adam Walsh Child Protection and Safety Act.

{¶2} Campbell was indicted on March 17, 2011, for failing to notify the sheriff of an address change, a felony of the first degree. On May 5, 2011, he pleaded guilty to failure to notify as a second-degree felony. The trial court accepted Campbell’s plea and set sentencing for May 20, 2011. On May 19, Campbell filed a motion and a supplemental motion to withdraw his guilty plea, arguing that he had entered his plea in ignorance of the Ohio Supreme Court’s decisions in *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, and *State v. Gingell*, 128 Ohio St.3d 444, 2011-Ohio-1481, 946 N.E.2d 192. Campbell also argued that the indictment was facially invalid, that the state had not filed a bill of particulars even though Campbell had requested one, and that the facts did not support the charge. The trial court granted Campbell’s motion to withdraw his plea.

{¶3} Campbell filed a motion to dismiss the indictment on June 24, 2011, arguing that the indictment was facially invalid because (1) it failed to state an



offense and (2) it alleged a violation under Senate Bill 10, which was inapplicable to him because he had committed his offense and had been classified under Megan's Law. The state filed a bill of particulars on July 7, 2011.

{¶4} After a hearing on July 13, 2011, the trial court orally overruled Campbell's motion to dismiss the indictment. Campbell filed a motion for reconsideration of the trial court's oral denial of the motion to dismiss the indictment, which the trial court overruled in a written entry. Campbell pleaded guilty to failing to provide notice of an address change. The court accepted Campbell's plea and found him guilty on September 20, 2011. Campbell filed a premature notice of appeal on October 5, 2011. Campbell was sentenced on October 13, 2011, to two years' incarceration.

***Analysis***

{¶5} Campbell's sole assignment of error alleges that the trial court erred in overruling his motion to dismiss the indictment because the application of R.C. Chapter 2950 to him was unconstitutional.

{¶6} The Ohio Supreme Court held in *Bodyke*, 126 Ohio St.3d 266, 2010-Ohio 2424, 933 N.E.2d 753, that "R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders whose classifications have already been adjudicated by a court and made the subject of a final order, violate the separation-of-powers doctrine by requiring the reopening of final judgments." *Id.* at paragraph three of the syllabus. Further, the court held that the statutes violate the separation of powers doctrine because they "impermissibly instruct the executive branch to review past decisions of the judicial branch." *Id.* at paragraph two of the syllabus. The court severed the statutory provisions, holding that "R.C. 2950.031 and 2950.032 may not be applied to offenders previously adjudicated under Megan's Law," and "reinstated" the

classifications and community-notification and registration orders imposed previously by the trial courts. *Id.* at ¶ 66. The Supreme Court cited *Bodyke in Gingell*, 128 Ohio St.3d 444, 2011-Ohio-1481, 946 N.E.2d 192, holding that an offender who had been judicially classified as a sexually oriented offender and had been ordered to register annually for ten years under Megan's Law could not be prosecuted for failing to comply with a more restrictive requirement imposed after reclassification as a Tier III sex offender under Senate Bill 10.

{¶7} In *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, the Ohio Supreme Court held that "2007 Am.Sub.S.B. No. 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." *Id.* at syllabus. The court concluded that Senate Bill 10's more stringent classification, registration, and community-notification provisions imposed "new or additional burdens, duties, obligations, or liabilities as to a past transaction" and created "new burdens, new duties, new obligations, or new liabilities not existing at the time" upon sex offenders who had committed their crimes prior to Senate Bill 10's enactment. *Id.* at ¶ 19. The court held that Senate Bill 10's classification, registration, and community-notification provisions were punitive and could not constitutionally be retroactively applied to sex offenders who had committed their sex offenses before its enactment.

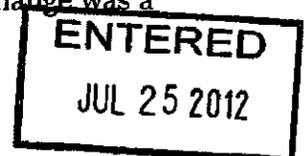
{¶8} The Supreme Court applied the holdings of *Bodyke* and *Williams* in *State v. Palmer*, 131 Ohio St.3d 278, 2012-Ohio-580, 964 N.E.2d 406. Palmer had pleaded guilty to sexual battery in 1995 and had served an 18-month sentence. He had no duty to register under Megan's Law because he had completed his sentence prior to July 1, 1997. After Senate Bill 10 became effective, Palmer was administratively

classified as a Tier III sex offender. He was then indicted for failing provide notice of an address change and for failing to verify his current address. The Supreme Court held that the indictment against Palmer should have been dismissed because Senate Bill 10's classification, registration, and community-notification provisions could not constitutionally be applied to him. Further, the court noted, Megan's Law did not apply to Palmer because he had been released from prison for his sex offense prior to July 1, 1997.

{¶9} Because Campbell committed his crime in 2002, Senate Bill 10's classification, registration, and community-notification provisions may not be applied to him. Campbell argues that he was unconstitutionally charged and convicted under Senate Bill 10. The indictment alleges that Campbell failed to provide written notice at least 20 days prior to an address change. Campbell argues that when he was convicted of his original sex offense, he was required, under Megan's law, to give written notice at least seven days prior to an address change. Therefore, Campbell asserts, the indictment unconstitutionally charges him with a Senate Bill 10 violation.

{¶10} Megan's Law was amended effective May 7, 2002, by Am.Sub.S.B. No. 175, to provide for a 20-day notice requirement. Megan's Law and its amendments were upheld as constitutional by the Ohio Supreme Court. *See State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, 896 N.E.2d 110; *State v. Cook*, 83 Ohio St.3d 404, 700 N.E.2d 570 (1998). Therefore, Campbell had a duty under Megan's Law to provide written notice at least 20 days prior to an address change.

{¶11} Campbell also argues that the indictment unconstitutionally charged him with a Senate Bill 10 violation because it charged him with a first-degree felony, and when he committed his sex offense, failure to notify of an address change was a

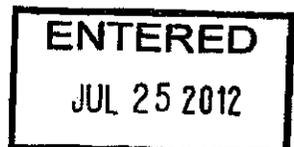


fifth-degree felony. Campbell asserts that the “retroactive” application of R.C. 2950.99’s current penalty provisions, which made Campbell’s failure-to-notify offense a first-degree felony, was unconstitutional.

{¶12} Current R.C. 2950.99’s penalty provisions became effective January 1, 2008. Campbell pleaded guilty to failing to notify the sheriff of an address change on or about March 2, 2011. Although Campbell’s duty to register stemmed from his sex offense, his failure to notify the sheriff of an address change was a new offense that he had committed after the effective date of current R.C. 2950.99’s penalty provisions. See *State v. Bowling*, 1st Dist. No. C-100323, 2011-Ohio-4946, ¶ 26, *discretionary appeal allowed*, 131 Ohio St.3d 1437, 2012-Ohio-331, 960 N.E.2d 986; *State v. Freeman*, 1st Dist. No. C-100398, 2011-Ohio-4357, ¶ 25. Therefore, current R.C. 2950.99 was not applied retroactively to Campbell’s conduct. *Id.*

{¶13} The Supreme Court’s decision in *Williams* does not require a different result. As we pointed out in *Bowling* and *Freeman*, *Williams* dealt with the imposition of Senate Bill 10’s more stringent registration requirements upon an offender who had committed his sex offense prior to its enactment. *Bowling* at ¶ 28; *Freeman* at ¶ 21. This case deals with the imposition of R.C. 2950.99’s penalty provisions on Campbell, who committed his offense after the effective date of that statute. Although current R.C. 2950.99 has the same effective date as Senate Bill 10, it was not enacted as part of Senate Bill 10. It was enacted as part of Am.Sub.S.B. 97, which, among other things, modified the penalties for violations of the sex-offender registration and notification laws. *Bowling* at ¶ 28; *Freeman* at ¶ 21.

{¶14} Campbell had an ongoing duty to notify the sheriff of any change of address. His indictment, conviction, and sentence were based upon his failure-to-notify offense, which occurred after R.C. 2950.99’s effective date. We point out that,



contrary to Campbell's argument, he is not being punished twice for the same crime. He was punished in 2002 for his sex offense. His present conviction is based on his separate offense for failure to notify.

{¶15} Campbell had an ongoing duty under Megan's Law to provide written notice 20 days prior to a change of address. His failure-to-notify offense was based upon that duty, and not on any unconstitutional reclassification under or retroactive application of Senate Bill 10. Further, the penalty provisions of current R.C. 2950.99 were not applied retroactively because Campbell's failure-to-notify offense was committed after the effective date of that statute. The assignment of error is overruled.

{¶16} The judgment of the trial court is affirmed.

Judgment affirmed.

**SUNDERMANN, P.J., and HENDON, J., concur.**

Please note:

The court has recorded its own entry this date.

