

ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio

Plaintiff-Appellant,

vs.

Donny Howard

Defendant-Appellee.

Case No. 2011-2126

On Appeal from the
Montgomery County Court
of Appeals, Second
Appellate District

Court of Appeals
Case No. 24680

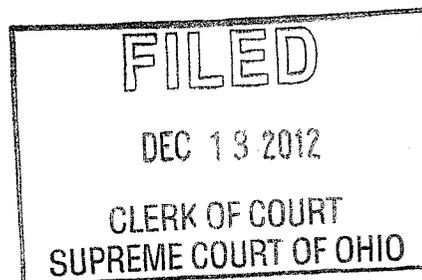
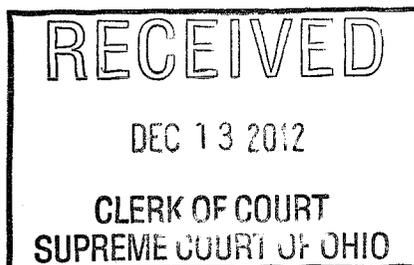
APPELLANT'S MOTION FOR RECONSIDERATION

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APPELLANT'S MOTION FOR RECONSIDERATION

Now comes Appellant, the State of Ohio, and hereby moves this Honorable Court to reconsider its decision that R.C. 2950.99, in its current form, does not apply to sex offenders originally classified under Megan's Law. *State v. Howard*, Slip Opinion No. 2012-Ohio-5738, ¶ 30. This motion for reconsideration is filed pursuant to S.Ct.Prac.R. 11.2. The reasons for reconsideration are set forth in the accompanying memorandum.

Respectfully submitted,

MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY

BY 

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**COUNSEL FOR APPELLANT,
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Memorandum

In the decision issued on December 6, 2012, this Court ruled that, as a Megan's Law offender, Donny Howard is not only subject to the sex-offender registration obligations under *former* R.C. 2950.05, he is likewise subject to the penalty provisions under *former* R.C. 2950.99. Specifically, this Court stated: "R.C. 2950.99 describes punishments for people who violate the requirements of the AWA – it does not reach back to cover offenders who must abide by Megan's Law. Former R.C. 2950.99 addresses punishments for offenders who violate the provisions of Megan's Law, including former R.C. 2950.05. Current R.C. 2950.99 applies to a different statutory landscape; by its own terms it applies to offenders who violate current R.C. 2950.05." *Howard*, ¶ 19. This Court's reasoning appears to contravene the rules of statutory interpretation set forth in R.C. 1.54; 1.55; and 2901.04(D), and, on that basis, the State requests reconsideration.

Revised Code 1.54 instructs that, "A statute which is reenacted or amended is intended to be a continuation of the prior statute and not a new enactment, so far as it is the same as the prior statute," while R.C. 1.55 states that, "A reference to any portion of a statute of this state applies to all reenactments or amendments thereof." Furthermore, 2901.04(D) declares that, "Any provision of the Revised Code that refers to a section, or to a division of a section, of the Revised Code that defines or specifies a criminal offense shall be construed to also refer to an existing or former law of this state, another state, or the United States, to an existing or former municipal ordinance, or to an existing or former division of any such existing or former law or ordinance that defines or specifies, or that defined or specified, a substantially equivalent offense."

According to these rules of statutory construction, this Court's treatment of the version of R.C. 2950.99 contained in Am.Sub.S.B. No. 97 as being separate from former R.C. 2950.99 is

untenable. Current R.C. 2950.99, which is an amended version of former R.C. 2950.99 setting forth penalties for violations of sex offender registration obligations, cannot be deemed a new enactment but, rather, is a continuation of former R.C. 2950.99. See, R.C. 1.54. And references to the penalty section R.C. 2950.99 contained in Megan's Law necessarily refer to subsequent, amended versions of R.C. 2950.99. See, R.C. 1.55.

What's more, because current R.C. 2950.99 refers to other sections of the Revised Code that define, or specify, criminal offenses, e.g., the failure to notify of a change of address defined in R.C. 2950.05, the rules of statutory interpretation require that it be construed to refer to former R.C. 2950.05 enacted as part of Megan's Law, as well as to current R.C. 2950.05. See, R.C. 2901.04(D). In other words, R.C. 2901.04(D) means that R.C. 2950.99's reference to the statutes that define sex offender registration obligations and criminalize the failure to fulfill those duties is a reference not only to obligations under the Adam Walsh Act, but also to the obligations under Megan's Law. Thus, this Court's finding that, "by its own terms [current R.C. 2950.99] applies to offenders who violate current R.C. 2950.05" is only partially accurate. *Howard*, ¶ 19. In fact, by its own terms – and by the rule of statutory interpretation set forth in R.C. 2901.04(D) – current R.C. 2950.99 should apply to all sex offenders who violate R.C. 2950.05, whether under the Adam Walsh Act, or under Megan's Law.

Conclusion

The State asks this Honorable Court to grant this motion for reconsideration and to issue a decision that not only reverses the judgment of the Second District Court of Appeals herein, but that also holds Donny Howard's violation of R.C. 2950.05 was a felony of the first degree. The matter should then be remanded for re-sentencing as a first-degree felony.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Reconsider was sent by first class mail on this 12th day of December, 2012, to the following: Marshall Lachman, Counsel of Record, 75 North Pioneer Boulevard, Springboro, Ohio 45066; Daniel T. Van, Asst. Prosecuting Attorney, Cuyahoga County Prosecutor's Office, Amicus Curiae, 1200 Ontario Street, Cleveland, Ohio 44113, and Timothy Young, Ohio Public Defender Commission, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215.

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