

ORIGINAL

IN THE SUPREME COURT OF OHIO

IN RE: I.A.
a minor child

NO. 2012-2122

**ON APPEAL FROM THE
MONTGOMERY COUNTY COURT
OF APPEALS, SECOND
APPELLATE DISTRICT**

**COURT OF APPEALS
CASE NO. 25078**

MERIT BRIEF OF APPELLEE THE STATE OF OHIO

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STATEMENT OF THE CASE AND FACTS

In December, 2011, Defendant-Appellant I.A. was adjudicated a delinquent juvenile for committing a rape when he was 14 years old. (Tr. 3-4) At the February 1, 2012, disposition hearing, the Montgomery County Juvenile Court committed I.A. to the Department of Youth Services for a period of at least one year and potentially until he turns 21 years old.¹ (Tr. 7) In addition, the court classified I.A. as a juvenile offender registrant and determined him to be a Tier III sex offender/child-victim offender. (Tr. 17)

I.A. appealed to the Second District Court of Appeals, contending that, by classifying him as a juvenile offender registrant before he was released from the secure facility, the juvenile court violated R.C. 2152.83. The court of appeals disagreed. It held that R.C. 2152.83(B)(1) grants the juvenile court the discretion to conduct a classification hearing at either the time of disposition or at the time of the committed-juvenile's release. *In re I.A.*, 2nd Dist. No. 25078, 2012-Ohio-4973, ¶ 15. Accordingly, the court of appeals affirmed the juvenile court's decision to classify I.A. as a juvenile offender registrant at the time of disposition. *Id.* at ¶ 16-18.

Nine days later, I.A. asked the court of appeals to certify a conflict between its judgment and the Fifth District's judgment in *In re B.G.*, 5th Dist. No. 2011-COA-012, 2011-Ohio-5898. The court of appeals found that a conflict existed and certified the following question of law, which is now before this Court:

If a court commits a child to a secure facility, does R.C. 2152.83(B)(1) permit the court to conduct a classification hearing at the time of disposition?

¹ Although not raised or addressed below, while I.A. was committed to the Department of Youth Services ("DYS"), there is some uncertainty over whether I.A. was necessarily committed to a "secure facility." As the juvenile court noted, it is common for DYS to send male juvenile sex offenders to a facility know as Paint Creek. (Tr. 11) But Paint Creek is an unsecure facility. (*Id.*) Consequently, the court was concerned that if it did not classify I.A. at the time of disposition, and then I.A. transferred to Paint Creek or some other unsecure facility, the court might lose the authority under R.C. 2152.83(B)(1) to ever classify him. (*Id.*)

ARGUMENT

Proposition of Law:

If a juvenile court adjudicates a child delinquent for committing a sexually oriented offense or a child-victim oriented offense and commits the child to a secure facility, R.C. 2152.83(B)(1) grants the court the discretion to conduct a classification hearing at the time of disposition or at the time of the child's release from the secure facility.

The issue certified by this Court is: "If a court commits a child to a secure facility, does R.C. 2152.83(B)(1) permit the court to conduct a classification hearing at the time of disposition? (February 6, 2013 *Entry*) The answer is yes, as the Second District Court of Appeals correctly held below.

If a juvenile court adjudicates a fourteen or fifteen year old child as a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and the court commits the child to a secure facility, R.C. 2152.83(B)(1) clearly and unambiguously provides the court the discretion to conduct a juvenile-offender-registrant classification hearing at the time of disposition of the child, or at the time of the child's release from the secure facility. Here, when the juvenile court classified I.A. as a juvenile offender registrant at the time of I.A.'s disposition, it did so in full compliance with R.C. 2152.83(B)(1), despite the fact that I.A.'s disposition included a commitment to the Department of Youth Services. The court of appeals' judgment upholding the trial court's decision, therefore, must stand.

A. The Second District Court of Appeals' holding is wholly consistent with the plain meaning of R.C. 2152.83(B)(1).

The purpose of statutory interpretation is to determine the intent of the legislature in enacting a statute. *Ohio Assn. of Public School Emp. v. Twin Valley Local School Dist. Bd. of Edn.*, 6 Ohio St.3d 178, 181, 451 N.E.2d 1211 (1983). In so doing, the first place a court must look is at the language of the statute itself:

[If the words employed in the statute are] “free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. [This is because the] question is not what did the General Assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.”

State v. Hairston, 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471, ¶ 12, quoting *Slingluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902), paragraph two of the syllabus.

Accordingly, “[w]hen the wording of a statute is clear and unambiguous on its face, judicial interpretation is not required; rather, the court must give effect to the words used.” *Doughterty v. Torrence*, 2 Ohio St.3d 69, 70, 442 N.E.2d 1295 (1982); see also *Hairston, supra*, citing *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944), paragraph five of the syllabus (“An unambiguous statute is to be applied, not interpreted.”). Only if the statute is ambiguous may a court interpret the statute to determine the General Assembly’s intent. *Hairston, supra*.

At issue here is the meaning of the language contained in R.C. 2152.83(B)(1), which applies when a juvenile is fourteen or fifteen years of age at the time he or she commits a sexually-oriented offense. The statute provides: “The court that adjudicates a child a delinquent child, on the judge’s own motion, may conduct at the time of disposition of the child or, if the court commits the child for the delinquent act to the custody of a secure facility, may conduct at the time of the child’s release from the secure facility a hearing” to determine whether the child should be classified a juvenile offender registrant. R.C. 2152.83(B)(1) is not ambiguous.

The General Assembly’s use of the word “may” and its use of the conjunction “or” in R.C. 2152.83(B)(1) clearly and unambiguously provides the juvenile court with the discretion to

do two things: to decide *if* a classification hearing should be held, and to decide *when* a classification hearing will be held (i.e., at disposition or at the committed-juvenile's release from a secure facility). This was not only the holding of the Second District below, *In re I.A.* at ¶ 15, but is the conclusion reached by several other appellate courts as well. *See, e.g., In re P.B.*, 4th Dist. No. 07CA3140, 2007-Ohio-3937, ¶ 9 (Emphasis sic.) (“[w]hen an offender is fourteen years of age at the time of the offense, a court possesses discretion to make the sexual offender determination *either* at the time of disposition or at the child's release.”); *In re B.D.*, 11th Dist. No. 2011-P-0078, 2012-Ohio-4463, ¶ 14 (Emphasis sic.) (“[T]he hearings prescribed by R.C. 2152.83(B) may occur at *any* time during the disposition period, including prior to commitment to DYS or another secure facility.”); *In re A.R.*, 12th Dist. No. CA2006-09-12, 2007-Ohio-5191, ¶ 12 (“R.C. 2152.83(B)(1) provides that the juvenile court * * * may conduct a hearing to determine whether the delinquent child should be classified as a juvenile sex offender registrant as either the time of disposition or the time at which the delinquent child is released from a secure facility * * *.”). Accordingly, because the statute is clear and unambiguous on its face, the Second District correctly avoided any need to interpret what the General Assembly intended to enact, and instead upheld the juvenile court's application of the statute as written.

And as written, R.C. 2152.83(B)(1) allowed the Montgomery County Juvenile Court to decide, at its discretion, whether to conduct a juvenile-offender-registrant hearing at the time of I.A.'s disposition, or whether to wait until after I.A.'s release from a secure facility. Acting upon its discretion, the juvenile court elected to conduct the classification hearing at the time of I.A.'s disposition. (Tr. 9-17) The juvenile court did not violate R.C. 2152.83(B)(1) in doing so.

B. I.A.’s reliance on the holding and rationale in *In re B.G.* is flawed.

The Fifth District Court of Appeals, however, reads R.C. 2152.83(B)(1) differently. In *In re B.G.*, 5th Dist. No. 2011-COA-012, 2011-Ohio-5898, the Fifth District Court of Appeals, in an effort at interpreting what the General Assembly intended when it enacted R.C. 2152.83(B)(1), held that “[t]he statute should be construed as permitting the court to classify the child at disposition unless the child is sent to a secure facility, in which case it may classify the child upon release.” *Id.* at ¶ 32. The Fifth District believes that the use of the word “may” in the statute “indicates the court has discretion to decide whether, not when, to classify the child.” *Id.* But the Fifth District’s reasoning – and I.A.’s reliance on it – is flawed.

Specifically, the Court in *In re B.G.* contends that its interpretation of Subsection (B)(1) of R.C. 2152.83 is supported by Subsection (B)(2), which provides that “[a] judge shall conduct a hearing under division (B)(1) of this section to review the effectiveness of the disposition made of the child and of any treatment provided for the child placed in a secure setting and to determine whether the child should be classified a juvenile offender registrant.” The court somehow concludes from this language that Subsection (B)(2) “supports the interpretation that the Legislature intended for the court to classify the child only after determining whether the disposition and treatment provided for the child in a secure setting was effective.” *Id.* at ¶ 37.

But Subsection (B)(2) does not support that interpretation. If the court’s reasoning in *In re B.G.* were true, then the only child that would be entitled to a hearing before being classified a juvenile offender registrant – or, the only child that would be entitled to later review of his classification once it is made - would be a child placed in a secured setting.² But that is certainly

² This, in fact, appears to be an argument advanced in I.A.’s brief. (See *Merit Brief of Appellant, I.A.* at p. 4)

not true. R.C. 2152.83(B)(2) mandates a hearing before classifying *every* juvenile sex offender, whether they are committed to a secure facility or not. Consequently, *In re B.G.*'s attempts at interpreting the legislative intent behind R.C. 2152.83(B)(1) falls short and results in a strained and illogical reading of the statute.

Moreover, I.A.'s reliance on *In re B.G.*'s "public policy" argument for reading R.C. 2152.83(B)(1) as requiring court's to wait until the juvenile is released from a secure facility before classifying him is flawed as well. In particular, I.A. adopts the reasoning advanced in *In Re B.G.* "that because R.C. 2152.83(A)(1)³ requires the court to wait to issue a classification order for 16- or 17-year-old children, it makes sense to construe R.C. 2152.53(B)(1) as also requiring the court to wait until the child's release, lest the younger children would not be given the same benefit of treatment afforded to older children. [*In re*] *B.G.* at ¶ 38-39." (*Merit Brief of Appellant, I.A.*, p. 7) But such reasoning is misplaced.

R.C. 2152.83(A)(1) does not grant juvenile courts any discretion *at all* in deciding whether sixteen or seventeen year old offenders should be classified - regardless of the benefits these juveniles might gain from the treatment they receive in a secure facility, the court nevertheless "*shall issue * * * an order that classifies the child a juvenile offender registrant.*" Subsection (B)(1), on the other hand, gives the juvenile court the discretion to classify fourteen and fifteen year olds at the time of disposition and then, if the child is committed to a secure facility and receives the benefit of treatment, gives the court the discretion to revisit the classification upon the child's release. Thus, despite I.A.'s contention to the contrary,

³ R.C. 2152.83(A)(1), which applies to juveniles who are sixteen or seventeen years of age at the time of committing a sexually-oriented offense, directs that a court "*shall issue as part of the disposition order or, if the court commits the child for the delinquent act to the custody of a secure facility, shall issue at the time of the child's release from the secure facility an order that classifies the child a juvenile offender registrant * * *.*"

Subsection (B)(1) grants courts the ability to afford fourteen and fifteen year old offenders *more benefit* from treatment than is afforded older offenders, not less.

Another misplaced public policy argument I.A. adopts from *In re B.G.* is that “a court should give a child all possible benefit of rehabilitation and treatment before deciding to order [the child] to comply with the registration and community notification similar to that required of adult offenders. [*In re B.G.*] at ¶ 40-41.” (*Merit Brief of Appellant, I.A.*, p. 8) The problem with this argument is twofold. First, the community notification requirements that are imposed upon juvenile sex offenders are not similar to those imposed upon adult offenders. Compare R.C. 2950.11(A) with R.C. 2950.11(F), 2152.13 and 2152.86. Second, the law already allows juvenile courts to take into consideration the benefits of rehabilitation and treatment that take place both *before and after* the juvenile is classified. R.C. 2152.83(B)(1) and 2152.83(B)(2) allows courts, both at the time of disposition *and again* at the time of the child’s release from a secure facility, the discretion “to review the effectiveness of the disposition and of any treatment provided to the child placed in a secure setting,” to determine, or redetermine, the child’s classification. R.C. 2152.84(A)(1) likewise provides that when a juvenile court

issues an order under * * * division (A) or (B) of R.C. 2152.83 of the Revised Code that classifies a delinquent child a juvenile offender registrant * * *, upon completion of the disposition of that child * * * the judge * * * shall conduct a hearing to review the effectiveness of the disposition and of any treatment provided for the child, to determine the risks that the child might re-offend, to determine whether the prior classification of the child as a juvenile offender registrant should be continued or terminated * * *, and to determine whether its prior determination [of the child’s “tier I, II or II” designation] should be continued or modified * * *.

Consequently, I.A.’s concern that allowing courts to classify juveniles that are committed to a secure facility at the disposition hearing would prevent the court from considering the benefits

the child later receives from rehabilitation and treatment is addressed - and dispelled - by other relevant portions of R.C. Chapter 2152.

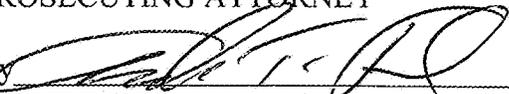
Finally, I.A.'s suggestion that "there is no public harm in requiring the trial court to wait until the juvenile is released from the secured facility" before holding a classification hearing misses the point. It is not the role of a court to decide whether a statute is wise or unwise, or to decide whether it is better to enforce the statute or to ignore it. The General Assembly writes the laws, and unless those laws are ambiguous or violate constitutional principles, judges are obligated to apply them as written and not rewrite them. That is precisely what the Second District Court of Appeals did when it upheld the juvenile court's discretionary decision to classify I.A. as a juvenile offender registrant at the time disposition. The decision below, therefore, must be affirmed.

CONCLUSION

There is nothing confusing, unclear or ambiguous about the provisions of R.C. 2152.83(B)(1) regarding the timing of juvenile-offender-registrant-classification hearings for fourteen or fifteen year old offenders. The statute gives a juvenile court the discretion to conduct the hearing at the time of the juvenile's disposition, or at the time of a committed-jvenile's release from a secure facility, or the hearing need not be conducted at all. For that reason and in view of the foregoing law and argument, it is respectfully requested that this Court answer the certified question in the positive, adopt the Second District Court of Appeals' reasoning below, and affirmed the court of appeals' decision.

Respectfully submitted,
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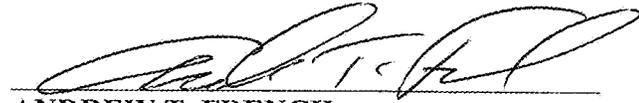
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit Brief was sent by first class, postage pre-paid, to Counsel for Defendant-Appellant: Amanda J. Powell, Office of the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, OH 43215, on June 10TH, 2013.



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