

[Cite as *State v. Wilson*, 2010-Ohio-2767.]

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

STATE OF OHIO,	:	APPEAL NO. C-090436
	:	TRIAL NO. B-0808182
Plaintiff-Appellee,	:	
	:	<i>DECISION.</i>
vs.	:	
CHARLES WILSON	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Sentence Vacated and Cause Remanded

Date of Judgment Entry on Appeal: June 18, 2010

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Rachel Lipman Curran*, Assistant Prosecuting Attorney, for Appellee,

Bruce K. Hust, for Appellant.

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

HENDON, Judge.

{¶1} Defendant-appellant Charles Wilson appeals the trial court's sentence of three years' mandatory incarceration. For the following reasons, we vacate the sentence and remand for resentencing.

Wilson Pleaded to Attempt

{¶2} The state charged Wilson, a sex offender, with failure to register his change of address with the Hamilton County Sheriff's Office, in violation of R.C. 2950.05(E)(1). Wilson's underlying offense, rape, was a first-degree felony. Accordingly, his alleged failure to register was charged as a first-degree felony.¹ Wilson had been previously convicted of a nonreporting violation, so he was charged as a repeat offender.

{¶3} Apparently because Wilson had cooperated with the state in an unrelated matter, the state reduced Wilson's charge to attempted failure to register. Under R.C. 2923.02(E)(1), the attempt statute, Wilson's crime became a second-degree felony. The trial court accepted Wilson's guilty plea to this reduced charge and imposed a three-year mandatory sentence under R.C. 2950.99 for repeat nonreporting offenders. Wilson objected to his sentence on the ground that the trial court should have applied the Revised Code's general felony sentencing laws, not R.C. 2950.99, since he had been found guilty only of attempt. This appeal followed.

{¶4} In his first assignment of error, Wilson argues that the trial court erred when it sentenced him under R.C. 2950.99. To resolve this issue, we must determine

¹ See R.C. 2950.99.

if R.C. 2950.99 applies to attempt crimes. Statutory interpretation presents a question of law.² We review questions of law de novo.³

Plain Meaning

{¶5} When we interpret a statute, our paramount concern is to discern the legislative intent.⁴ To this end, “[a]n unambiguous statute must be applied in a manner consistent with the plain meaning of the statutory language, and a court cannot simply ignore or add words.”⁵ R.C. 2950.99 delineates the felony level and, in some instances, the penalty for sex offenders who fail to comply with various registration and notification requirements. R.C. 2950.99(A)(2)(b) requires a court to impose a mandatory three-year prison term on repeat nonreporting offenders. But the statute contains no provision requiring a mandatory term for a defendant convicted only of an attempt offense. Applying the plain and unambiguous meaning of the statute to the facts of this case, we hold that the trial court erred when it sentenced Wilson to mandatory incarceration under R.C. 2950.99(A)(2)(b).

Taylor is Distinguishable

{¶6} The state contends that the trial court’s sentence should be affirmed on the authority of *State v. Taylor*.⁶ In *Taylor*, the defendant had been convicted of attempted possession of crack cocaine. The Ohio Supreme Court held that the sentencing provisions in R.C. 2925.11, the “possession of drugs” statute—and not the

² *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, 871 N.E.2d 1167, ¶8, citing *Brenneman v. R.M.I. Co.*, 70 Ohio St.3d 460, 1994-Ohio-322, 639 N.E.2d 425.

³ *Id.*; see, also, *Goodyear Tire & Rubber Co. v. Aetna Cas. & Sur. Co.* 95 Ohio St.3d 512, 2002-Ohio-2842, 769 N.E.2d 835, ¶4; *Cleveland Elec. Illuminating Co. v. Pub. Util. Comm.* (1996), 76 Ohio St.3d 521, 523, 668 N.E.2d 889.

⁴ *Morgan v. Ohio Adult Parole Auth.*, 68 Ohio St.3d 344, 345, 1994-Ohio-380, 626 N.E.2d 939; *State v. S.R.* (1992), 63 Ohio St.3d 590, 594, 589 N.E.2d 1319; *Featzka v. Millcraft Paper Co.* (1980), 62 Ohio St.2d 245, 247, 405 N.E.2d 264.

⁵ *Portage Cty. Bd. of Commrs. v. Akron*, 109 Ohio St.3d 106, 2006-Ohio-954, 846 N.E.2d 478, ¶52; see, also, R.C. 1.42; *Morgan*, *supra*; *S.R.*, *supra*.

⁶ 113 Ohio St.3d 297, 2007-Ohio-1950, 865 N.E.2d 37.

general felony sentencing statutes—applied, thereby subjecting Taylor to mandatory incarceration.⁷ But in *Taylor*, the court determined that “an attempted possession of drugs is not a separate and distinct crime from possession of drugs, but rather is incorporated into the possession offense.”⁸ The court noted that R.C. 2925.01(G)(4) defines a “drug abuse offense” to include any *attempt* to commit a violation of R.C. 2925.11.⁹ Thus, the court reasoned that the crime of attempted possession was one of the crimes delineated in R.C. 2925.11, and therefore that R.C. 2925.11 controlled the sentencing for that crime.¹⁰

{¶7} There are no comparable provisions in the Revised Code in regard to an “attempted failure to register.” So we find no basis to conclude that the legislature intended an “attempted failure to register” to be a crime incorporated in R.C. 2950.99. *Taylor* is therefore distinguishable from this case.

Wilson Must be Resentenced

{¶8} Because the trial court should have applied the Revised Code’s general felony sentencing provisions, we hold that Wilson’s sentence is contrary to law.¹¹ Wilson’s first assignment of error is sustained.

{¶9} In his second assignment of error, Wilson contends that the trial court failed to properly inform him of postrelease control. Our resolution of Wilson’s first assignment of error renders this one moot.¹²

{¶10} The sentence of the trial court is accordingly vacated, and this cause is remanded for resentencing in accordance with law and this decision.

⁷ Id. at syllabus.

⁸ Id. at ¶16.

⁹ Id. at ¶11.

¹⁰ Id. at syllabus.

¹¹ See R.C. 2953.08(A)(4).

¹² App.R. 12(A)(1)(c).

Sentence vacated and cause remanded.

CUNNINGHAM, P.J., and SUNDERMANN, J., concur.

Please Note:

The court has recorded its own entry on the date of the release of this decision.