

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Respondent-Appellee,	:	
- vs -	:	CASE NO. 2009-T-0033
ERIC ROBY,	:	
Defendant-Petitioner-Appellant.	:	

Appeal from the Court of Common Pleas, Case No. 08 CV 654.

Judgment: Reversed.

Dennis Watkins, Trumbull County Prosecutor, and *Deena L. DeVico*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Respondent-Appellee).

Eric Roby, pro se, PID: 405-203, Trumbull Correctional Institution, P.O. Box 901, Leavittsburg, OH 44430-0901 (Defendant-Petitioner-Appellant).

TIMOTHY P. CANNON, J.

{¶1} Appellant, Eric Roby, appeals the judgment entered by the Trumbull County Court of Common Pleas. The trial court denied Roby's petition to contest application of the Adam Walsh Act.

{¶2} In 2001, Roby pled guilty to 24 counts of rape, in violation of R.C. 2907.02(A)(1)(b), felonies of the first degree. Roby was sentenced to a 24-year term of imprisonment; he was classified as a sexually-oriented offender.

{¶3} Roby received notification from the Ohio Attorney General's Office that he had been reclassified as a Tier III offender pursuant to the enactment of Ohio's Adam Walsh Act ("AWA"). On February 21, 2008, Roby filed a petition to contest application of the AWA in the Trumbull County Court of Common Pleas. In his petition, Roby argued the following constitutional claims: (1) the retroactive application of Ohio's AWA to him constitutes an ex post facto law proscribed by Article I, Section 10 of the United States Constitution; (2) Section 28, Article II of the Ohio Constitution prohibits its retroactive application to an offender such as him who had already been sentenced and classified under the old law; (3) his reclassification with additional obligations imposed constitutes an impairment of an obligation of contract prohibited by Section 28, Article II of the Ohio Constitution and Clause 1, Section 10, Article I of the United States Constitution; (4) his reclassification constitutes successive punishment and is therefore a double jeopardy violation pursuant to the Fifth and Fourteenth Amendments of the United States Constitution and Section 10, Article I of the Ohio Constitution; and (5) the new law violates the doctrine of separation of powers.

{¶4} The state filed a motion for partial summary judgment, wherein it argued that application of the AWA to Roby was constitutional. The trial court granted the state's partial summary judgment motion. Thereafter, the state filed a brief in support of community notification; Roby filed a response brief. The trial court granted the state's motion finding Roby was subject to the community notification requirements.

{¶5} Roby filed a notice of appeal and raises the following assignments of error:

{¶6} “[1.] The Attorney General’s Office may not bestow jurisdiction on a court for the sake of administrative convenience.

{¶7} “[2.] The Trumbull County Court may not enhance a previous judgment of the Ashtabula County Court, thus the doctrine of *res judicata* is controlling.

{¶8} “[3.] The Attorney General has now broken a plea bargain between the Appellant and the State, thus the contract (bargain) is now invalid.”

{¶9} We address Roby’s assignments of error out of numerical order, as his second assignment of error is dispositive of this matter.

{¶10} Relying on the doctrine of *res judicata*, Roby argues that the Trumbull County Court of Common Pleas “has no authority to overrule a hearing and judgment by the Ashtabula Court of Common Pleas.”

{¶11} Although Roby was sentenced in the Ashtabula County Court of Common Pleas, a petition contesting the new registration requirements imposed under R.C. Chapter 2950 is to be filed in the Trumbull County Court of Common Pleas, where Roby is presently serving his term of imprisonment. See R.C. 2950.031(E). Roby was correct in filing his petition with the Trumbull County Court of Common Pleas.

{¶12} We construe Roby’s argument on appeal to be that the registration requirements under R.C. Chapter 2950 violate the doctrine of separation of powers, as it usurps the court’s prior adjudication of him as a sexually-oriented offender, and by doing so it encroaches upon the authority reserved for the judiciary branch.

{¶13} Recently, in *State v. Bodyke*, Slip Opinion No. 2010-Ohio-2424, the Supreme Court of Ohio decided the constitutionality of the current version of R.C. Chapter 2950, “as those provisions apply to sex offenders whose cases were

adjudicated prior to its enactment.” Id. at ¶1. Analyzing the separation of powers argument, the *Bodyke* Court concluded:

{¶14} “[T]hat R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders who have already been classified by court order under former law, impermissibly instruct the executive branch to review past decisions of the judicial branch and thereby violate the separation-of-powers doctrine.

{¶15} “We further conclude 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 opening of final judgments.” Id. at ¶60-61.

{¶16} The Supreme Court severed R.C. 2950.031 and 2950.032 and stated that the stated sections “may not be applied to offenders previously adjudicated by judges under Megan’s Law, and the classifications and community-notification and registration orders imposed previously by judges are reinstated.” Id. at ¶66.

{¶17} Additionally, we note that Roby advanced several constitutional claims in his petition for reclassification, yet failed to advance all claims in this appeal. The trial court reviewed Roby’s retroactivity, ex post facto, double jeopardy, and contracts arguments, finding them to be without merit. We decline to address these constitutional arguments based on the conclusion of the *Bodyke* Court “that the reclassification provision is unconstitutional.” Id. at ¶62.

{¶18} Based on the disposition of Roby’s second assignment of error, his first and third assignments of error are moot. Based on the authority of *State v. Bodyke*,

supra, the judgment of the Trumbull County Court of Common Pleas is hereby reversed, and judgment is entered in favor of appellant on his second assignment of error.

CYNTHIA WESTCOTT RICE, J., concurs,

DIANE V. GRENDELL, J., concurs with a Concurring Opinion.

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{¶19} I concur in the majority's ultimate determination that the Trumbull County Court of Common Pleas is precluded from enhancing or changing appellant's registration requirements under the Adam Walsh Act because such action violates the doctrine of Separation of Powers. *State v. Bodyke*, __ Ohio St.3d __, 2010-Ohio-2424, at paragraphs two and three of the syllabus. I note that, under *Bodyke*, those portions of the Adam Walsh Act providing for the reclassification of sex offenders have been severed and are unenforceable. *Id.* at ¶66. Accordingly, appellant's original classification and community notification and registration order imposed by the Ashtabula Common Pleas Court is "reinstated" and remains in full force and effect. See, e.g., *McCostlin v. State*, 11th Dist. No. 2008-L-117, 2009-Ohio-4097, at ¶23.