[Cite as *In re B.D.*, 2012-Ohio-4463.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

IN THE MATTER OF: B.D., DELINQUENT CHILD	:	**O P I N I O N**
	:	**CASE NO. 2011-P-0078**
	:	

Appeal from the Portage County Court of Common Pleas, Juvenile Division, Case No. 2011 JCA 00489.

Judgment: Affirmed.

Victor V. Vigluicci, Portage County Prosecutor, and *Pamela J. Holder*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Appellee-State of Ohio).

Timothy Young, Ohio Public Defender, and *Brooke M. Burns*, Assistant State Public Defender, 250 East Broad Street, #1400, Columbus, OH 43215-9308 (For Appellant-B.D., Minor).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, B.D., appeals from the judgment of the Portage County Court of Common Pleas, Juvenile Division, in which the trial court classified him as a Tier III juvenile sex offender. The issues to be determined by this court are whether a juvenile can be classified as a sex offender prior to his release from a secure facility; whether the court properly exercised its discretion in finding B.D. to be a Tier III offender; whether R.C. 2152.83 violates B.D.'s right to equal protection; and, finally, whether B.D. received ineffective assistance of counsel. For the following reasons, we affirm the decision of the trial court.

{¶2} On May 31, 2011, two Complaints were filed, alleging that B.D. was delinquent of Attempted Rape, in violation of R.C. 2907.02 and 2923.02, a felony of the second degree if committed by an adult, and Gross Sexual Imposition, in violation of R.C. 2907.05, a felony of the fourth degree if committed by an adult.

{¶3} On July 12, 2011, B.D. admitted to the foregoing charges of Attempted Rape and Gross Sexual Imposition.

{¶4} On August 22, 2011, the disposition hearing was held. As a result of that hearing, the court ordered B.D. to be committed to the custody of the Ohio Department of Youth Services ("DYS") for a period of not less than one year, and no longer than until B.D.'s twenty-first birthday, on the Attempted Rape charge. The court also ordered B.D. to be committed to DYS for a period of not less than six months, and no longer than until his twenty-first birthday, on the Gross Sexual Imposition charge. These sentences were to run concurrently. The court additionally classified B.D. as a discretionary Tier III juvenile sex offender registrant, but not as a public registry qualified sex offender. At the hearing, the trial court stated several times that the classification of B.D. was discretionary. The court noted that it had considered several reports and also reviewed victim statements to determine whether to classify B.D. as a juvenile sex offender registrant. Further victim statements and recommendations were also presented during the hearing. B.D.'s attorney did not object to the sex offender classification at the dispositional hearing.

{¶5} B.D. timely appeals and raises the following assignments of error:

{¶6} "[1.] The trial court erred when it classified [B.D.] as a juvenile offender registrant because it did not make that determination upon his release from a secure facility, in violation of R.C. 2152.83(A)(1).

{¶7} "[2.] The juvenile court abused its discretion when it classified [B.D.] as a tier III juvenile offender registrant when it made that determination based solely on [B.D.'s] offense and without the understanding that it had discretion to determine his tier level.

{¶8} "[3.] The juvenile court erred when it classified [B.D.] as a tier III juvenile offender registrant because the application of R.C. 2152.83 to him violates his right to equal protection under the law in violation of the Fourteenth Amendment to the United States Constitution; Article I, Section 2 of the Ohio Constitution.

{¶9} "[4.] [B.D.] was denied the effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution, when counsel failed to object to the timing of [B.D.'s] classification hearing, and when counsel failed to argue against a tier III classification."

{¶10} Because no objection was raised below regarding B.D.'s classification, this court's review is limited to plain error. Crim.R. 52(B) provides: "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." An alleged error is plain error only if the error is obvious, and "but for the error, the outcome of the [matter] clearly would have been otherwise." *State v. Long*, 53 Ohio St.2d 91, (1978), paragraph two of the syllabus.

{¶11} In his first assignment of error, B.D. argues that a juvenile offender who is committed to a secure facility must be classified as a sex offender only upon his release

from the secure facility, and not prior to that release. He cites R.C. 2152.83(B) to support this claim.

{¶12} R.C. 2152.83(B)(1), which controls the timing of a juvenile offender's classification, provides the following:

> 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 for the purposes described in division (B)(2) of this section if all of the following apply: (a) The act for which the child is adjudicated a delinquent child is a sexually oriented offense or a child-victim oriented offense that the child committed on or after January 1, 2002. (b) The child was fourteen or fifteen years of age at the time of committing the offense. (c) The court was not required to classify the child a juvenile offender registrant under section 2152.82 of the Revised Code or as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant under section 2152.86 of the Revised Code.

{¶13} B.D. was fifteen years old at the time of the offense and was committed to the custody of DYS, a secure facility, at the August 22, 2011 dispositional hearing. He argues, therefore, that he should not have been classified as a sex offender until his release from DYS. We disagree.

{¶14} This court has addressed this identical issue on several occasions and has held that the 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 B.W.K.*, 11th Dist. No. 2009-P-0058, 2010-Ohio-3050, ¶13, citing *In re Thrower*, 11th Dist. No. 2008-G-2813, 2009-Ohio-1314, ¶28 (emphasis sic) ("the language contained in subsequent subsections of R.C. 2152.83 suggests the hearing prescribed in R.C. 2152.82(B) may occur *at any time* during the disposition," given that "'disposition' as used in R.C. 2152.83(B)(1) refers to the entire disposition period"); *In re N.Z.*, 11th Dist. Nos. 2010-L-023, 2010-L-035, and 2010-L-041, 2011-Ohio-6845, ¶108. We hold, therefore, that the juvenile court did not err by classifying B.D. as a sex offender at the time of the disposition hearing held on August 22, 2011 and not at the time of his release from DYS.

{¶15} The first assignment of error is without merit.

{¶16} In his second assignment of error, B.D. argues that the trial court abused its discretion in classifying him as a Tier III sex offender, since it made that determination based on its belief that the classification level was offense-based and mandatory. B.D. asserts that the trial court failed to realize that B.D. could be classified as a lower-level sex offender and points to instances in the transcript that he asserts show the court's misunderstanding of the law.

{¶17} We initially note that several times throughout the transcript, the trial court stated that the sex offender classification was discretionary, not mandatory. From these statements, it is clear that the court was aware it was not required to classify B.D. as a sex offender. Although B.D. asserts that the trial court believed the classification was "offense-based," the record shows the trial court took into consideration various factors in addition to the nature of the offenses committed, as required by R.C. 2152.83(D),

including B.D.'s lack of remorse and the risk posed to the community by B.D. as well as his likelihood of reoffending.

{¶18} The reports of the probation, detention, and psychology departments concerning B.D. fully explore the R.C. 2152.83(D) factors. Furthermore, at the disposition hearing, the court heard recommendations from the prosecuting attorney, the probation department, the detention center, the psychology department, the victims' parents, as well as B.D.'s counsel before reaching a decision on B.D.'s disposition. Although the court may not have explicitly set forth each of its findings or considerations made of the R.C. 2152.83(D) factors, it is not required to do so under the statute. *In re B.W.K.*, *supra*, at ¶22.

{¶19} B.D. further argues that even if the trial court took into consideration the appropriate factors for discretionary classification, it improperly believed that attempted rape could be classified only as a Tier III offense and not as a lower-level offense.

{¶20} This court has found that in classifying juveniles as sex offenders, the juvenile court has discretion to determine which tier level to apply. *In re D.P.*, 11th Dist. No. 2008-L-186, 2009-Ohio-6149, ¶18, *rev'd on other grounds* ("the statutes vest a juvenile court with full discretion to determine whether to classify a delinquent child as a Tier I, Tier II, or Tier III offender") (citation omitted.)

{¶21} Although the lower court referred to the attempted rape charge as being a "Tier III offense" and the gross sexual imposition charge as a "Tier I offense," the trial court never stated these findings were mandatory. *Compare In re C.A.*, 2d Dist. No. 23022, 2009-Ohio-3303, ¶41, 77 (the appellate court reversed the trial court's finding that the juvenile was a Tier III offender since the lower court improperly stated that

"because this adjudication was a first-degree felony rape, this Court is *required* to classify you as a Tier III sex offender"). It is consequently reasonable to conclude that these statements were simply general observations regarding the maximum applicable tier into which B.D. could be classified for the offenses. Indeed, in addition to the foregoing statements, the court also observed it "*can* classify [B.D] as a Tier II sex offender on the charge of gross sexual imposition and a Tier III sex offender on the attempted rape charge." This language indicates the court was aware that its classification determination was discretionary. As we can find no evidence in the record that the trial court did not follow the law in making its discretionary classification or that the trial court's actions in classifying B.D. as a Tier III offender rise to the level of plain error, appellant's argument is therefore not well-taken.

{¶22} The second assignment of error is without merit.

{¶23} In his third assignment of error, B.D. claims that R.C. 2152.83 is an unconstitutional statute that violates his equal protection rights under the United States and Ohio Constitutions by classifying juvenile offenders differently based on their age at the time of the offense.

{¶24} The record reflects that B.D. did not raise this issue during the juvenile court proceedings. Generally, a defendant's failure to raise an issue below constitutes a waiver of the right to challenge a statute. *State v. Awan*, 22 Ohio St.3d 120, 489 N.E.2d 277, syllabus (1986). And, the Supreme Court of Ohio has cautioned that constitutional issues should not be resolved unless absolutely necessary, i.e., if a case can be resolved without addressing the issue, such issues should not be ruled upon. *State v. Talty*, 103 Ohio St.3d 177, 2004-Ohio-4888, ¶9. Because, however, B.D. ultimately

challenges his counsel's effectiveness for failing to object to the constitutionality of the statute, we are compelled to consider whether the classification scheme at issue violates standards of equal protection. For the reasons that follow, we discern no equal protection violation.

{¶25} It is well-settled that statutes enacted by the Ohio General Assembly enjoy a strong presumption of constitutionality. *See e.g. State v. Cook*, 83 Ohio St.3d 404, 409 (1998). Legislation will not be held unconstitutional save a showing of unconstitutionality beyond a reasonable doubt. *Id.* The burden of proving a statute's unconstitutionality rests upon the party challenging the legislation. *State v. Thompkins*, 75 Ohio St.3d 558, 560 (1996).

{¶26} The Fourteenth Amendment of the United States Constitution provides that "[n]o state shall * * * deny to any person within its jurisdiction the equal protection of the laws." The Supreme Court of Ohio has deemed the equal protection clause in the Ohio Constitution to be "functionally equivalent" to the right established by the Fourteenth Amendment. *Am. Ass. Of Univ. Professors, Cent. State Univ. Chapter v. Cent. State Univ.*, 87 Ohio St.3d 55, 59 (1999). Consequently, a claim under either provision will necessitate the same analysis; to wit, that similarly situated individuals be treated in a similar manner. *See e.g. McCrone v. Bank One Corp.*, 107 Ohio St.3d 272, 2005-Ohio-6505, ¶6. Because this legislative classification neither burdens a fundamental right nor targets a suspect class, we employ a rational-basis standard of review. *Groch v. General Motors Corp.*, 117 Ohio St.3d 192, 2008-Ohio-546, ¶82; *see also Vacco v. Quill*, 521 U.S. 793, 799 (1997). Under this standard, the burden of

persuasion is on the challenging party to show the measure being assailed is not rationally related to any legitimate interest. *Vacco*, *supra.*

{¶27} Under the relevant statutory scheme, juveniles who are 14 or 15 years old at the time they commit their offense and who have no prior adjudication for a sexually oriented offense, are subject to discretionary classification and registration. *See* R.C. 2152.83(B)(1). Alternatively, juveniles who are 14, 15, 16, or 17 years old at the time they commit their offense and who have a prior adjudication for a sexually oriented offense are subject to mandatory sex offender classification and registration. *See* R.C. 2152.82(A)(1). Given the interplay between the foregoing statutory subsections, juveniles 13 years old or younger at the time they commit their offense are not subject to sex offender classification or registration. *See generally* R.C. 2152.82; R.C. 2152.83; and R.C. 2152.86.

{¶28} With these points in mind, B.D. asserts that the age-based distinctions set forth under the statutory scheme violate a 15-year-old juvenile offender's right to equal protection because they are not rationally related to a legitimate end. B.D. concedes that the classification and registration requirements have been codified to protect the community from potential juvenile re-offenders who have committed a sexually oriented offense. He does not argue this purpose is illegitimate. Rather, he asserts the disparate manner in which the scheme treats similarly situated offenders is not rationally related to this end. In particular, he claims there is no reasonable foundation for treating 14 and 15-year-old offenders, who are subject to registration, differently from 13 year-old-offenders, who are not subject to registration. We do not agree.

{¶29} Initially, an equal protection claim arises only in the context of an unconstitutional classification, i.e. when individuals who are similarly situated are treated differently. *See Conley v. Shearer*, 64 Ohio St.3d 284, 288-289 (1992). Consequently, a statute that operates identically on all individuals under like circumstances does not violate one's right to equal protection.

{¶30} The statutory scheme in this case treats all 14- and 15-year-old sex offenders in B.D.'s situation similarly. Although it affords the trial court the discretion to classify such offenders, it nevertheless applies even-handedly to all 14- and 15-year-old first-time sex offenders. Construed thusly, we fail to perceive an equal protection violation.

{¶31} We acknowledge, however, appellant's argument focuses upon the disparate treatment 14- and 15-year-old offenders receive in comparison to their 13-year-old counterparts. Appellant claims that the scheme violates equal protection because it treats 14- and 15-year-old sex offenders more harshly than 13-year-old offenders. This argument, however, presumes that 14- and 15-year-old offenders are similarly situated with 13-year-old offenders. Appellant, however, has failed to demonstrate that 14- and 15-year-old offenders classified under the scheme *are* similarly situated to their younger 13-year-old counterparts. While proximity in age may suggest a similar situation, the legislature made a policy decision to exclude 13-year-old offenders from the classification scheme. The United States Supreme Court has observed that, for purposes of equal protection analysis,

> drawing lines that create distinctions is peculiarly a legislative task and an unavoidable one. Perfection in making the necessary

> classifications is neither possible nor necessary * * *. Such action by a legislature is presumed to be valid. *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 314 (1976).

{¶32} Although B.D. argues that the scheme provides no rationale for treating 14- and 15-year-old offenders differently from 13-year-old offenders, he has failed to overcome the presumption of validity. That is, he has neither established that the legislative policy of excluding 13-year-old offenders is unreasonable, nor has he demonstrated that the inclusion of 14 and 15-year-old offenders in the scheme is unreasonable. B.D. has therefore failed to overcome the presumptive validity of the "line-drawing" policy decision made by the General Assembly. As a result, we hold the age-based distinction relating to juvenile registration does not violate equal protection.

{¶33} One final point deserves attention, the concurring opinion asserts justice and prudence would be well-served by a lengthy exploration of the general impact of the Supreme Court's recent decision in *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446. *In re C.P.*, however, is fundamentally inapplicable to this case. In *In re C.P.*, the Supreme Court expressly held that R.C. 2152.86 violates the Eighth Amendment and the Fourteenth Amendment "[t]o the extent that it imposes automatic, lifelong registration and notification requirements on juvenile sex offenders tried within the juvenile system." *In re C.P.*, *supra*, syllabus. Appellant was *not* classified as a lifetime registrant under R.C. 2152.86, but, instead, was classified subject to the court's discretion, pursuant to R.C. 2152.82. Because this case does not involve a mandatory lifetime registration or R.C. 2152.86, the concurring opinion's prelection on *In re C.P.*'s holding is improper advisory obiter dicta.

{¶34} Appellant's third assignment of error is without merit.

{¶35} In his fourth assignment of error, B.D. asserts that his counsel was ineffective by failing to raise the issues in the first and second assignments of error, that trial counsel failed to object to the timing of the classification hearing and failed to object to the imposition of an offense-based classification.

{¶36} Trial counsel may be deemed ineffective if an appealing party demonstrates "(1) counsel's performance fell below an objective standard of reasonableness, and (2) that counsel's deficient performance prejudiced the defendant resulting in an unreliable or fundamentally unfair outcome of the proceeding." *State v. Madrigal*, 87 Ohio St.3d 378, 388-389, 721 N.E.2d 52 (2000), citing *Strickland v. Washington*, 466 U.S. 668, 687-688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). If a deficiency in counsel's performance is found, the appellant must then show that prejudice resulted. *State v. Swick*, 11th Dist. No. 97-L-254, 2001 Ohio App. LEXIS 5857, *5 (Dec. 21, 2001).

{¶37} In order to show prejudice warranting reversal, B.D. must show that there is a reasonable probability that, but for counsel's ineffectiveness, the outcome of the proceeding would have been different. *Strickland* at 694. Based on the analysis above, B.D. cannot demonstrate that the results of the proceedings would have been different but for counsel's failure to object. A threshold issue in a claim of ineffective assistance of counsel is whether there was actual error on the part of B.D.'s trial counsel. *State v. McCaleb*, 11th Dist. No. 2002-L-157, 2004-Ohio-5940, ¶ 92. Since we have found no error as to the timing of the classification hearing, no error in the imposition of the Tier III classification, and no equal protection violation, we cannot conclude that B.D. received

ineffective assistance by counsel's failure to object to the trial court's rulings on these issues.

{¶38} B.D. also argues that counsel was ineffective by failing to raise the issue of the equal protection clause violation because this issue was pending before the Ohio Supreme Court at the time of the disposition hearing in *In re C.P*. Since, however, *In re C.P.* does not apply to this case, we cannot conclude that B.D. suffered any prejudice by his counsel's failure to raise this issue.

{¶39} B.D.'s final assignment of error is without merit.

{¶40} For the foregoing reasons, the judgment of the Portage County Court of Common Pleas, Juvenile Division, classifying B.D. as a Tier III juvenile sex offender, is affirmed.

TIMOTHY P. CANNON, P.J., concurs,

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

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

{¶41} I concur in the majority's decision to affirm the judgment of the lower court, classifying B.D. as a Tier III juvenile sex offender. I write separately, however, to discuss the applicability of the recent Ohio Supreme Court decision in *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, to the present case.

{¶42} While the majority does not address this issue, B.D. noted in his brief that the subject of equal protection regarding juvenile sex offender registrants was pending

before the Ohio Supreme Court in *In re C.P.* at the time of briefing and should be considered by this court. *In re C.P.*'s holding could not be applied by the lower court at the time of the dispositional hearing because it had not yet been decided. Therefore, since this issue could not have previously been considered, in order to fully address the issues raised by B.D., it is both necessary and important to discuss *In re C.P.*'s holding regarding the applicability of automatic, lifetime sexual offender reporting and notification requirements with respect to juveniles.

{¶43} In *In re C.P.*, the Ohio Supreme Court was presented with the issue of whether R.C. 2152.86 violated the prohibition against cruel and unusual punishment contained in the Eighth Amendment to the United States Constitution and Article I, Section 9 of the Ohio Constitution, and whether it also violated the Due Process Clause. The majority of the Ohio Supreme Court held that the mandatory, automatic sex offender registration and notification requirements for public-registry-qualified juvenile-offender registrants (PRQJORs) were unconstitutional under both the Ohio and U.S. Constitutions.

{¶44} In reaching this ruling, a majority of the Court engaged in a lengthy discussion regarding stigma, confidentiality, and reporting requirements with respect to juveniles. The majority's analysis conveyed the need for protection of confidentiality of juvenile offender information in general, not just as it relates to R.C. 2152.86. *Id.* at ¶ 62 ("[c]onfidentiality has always been at the heart of the juvenile justice system" and "[t]hat core principle is trampled by any requirement of public notification").

{¶45} Justice Cupp, in his dissent in *In re C.P.*, observed that there was some confusion arising from the potential scope and applicability of the majority's decision in

future juvenile sex offender registration cases and stated that the majority's decision will affect "juvenile offenders and the juvenile judges who will preside over their cases," by "leav[ing] it to those judges to unravel the mysteries of this decision's application." *Id.* at ¶ 136. As a result of the majority's decision and its discussion of broad confidentiality concerns, uncertainty now exists as to what notification and registration requirements may be imposed on juvenile sex offenders.

{¶46} Based on such concerns, the question arising from the majority decision in *In re C.P.* is whether that ruling is limited solely to cases involving automatic, lifetime juvenile sexual offender registration requirements or, based on the lengthy discussion in the majority decision, do the general juvenile sexual registration and notification requirements violate the confidentiality standards that govern juvenile proceedings. To protect Ohio residents and avoid any such confusion, justice and prudence dictate that *In re C.P.* be limited in its application solely to cases involving the imposition of automatic, mandatory juvenile sex offender registration and notification requirements under R.C. 2152.86. Since juvenile court judges have discretionary authority in non-mandatory registration and notification cases, the constitutional concerns of the Ohio Supreme Court majority in *In re C.P.* are not implicated in cases similar to the present case.

{¶47} Moreover, regarding these other classifications, the Legislature has already decided that the fundamental public policy purposes for sex offender registration and notification outweigh any rehabilitative or confidentiality concerns with respect to juvenile sex offenders. R.C. 2152.82 to 2152.85. This public policy determination rests solely with the Ohio Legislature, not the courts. *State ex rel.*

Cincinnati Enquirer v. Dupuis, 98 Ohio St.3d 126, 2002-Ohio-7041, 781 N.E.2d 163, ¶ 21 (the legislature "is the ultimate arbiter of public policy"). This was also emphasized by Justice O'Donnell in his dissent in *In re C.P.* 131 Ohio St.3d 513, 2012-Ohio-1446, at ¶ 109 ("questions regarding whether R.C. 2152.86 actually furthers public interest and public safety" are questions for the Legislature). Therefore, given the absence of an express declaration of the unconstitutionality of any registration statutes aside from R.C. 2152.86, Ohio Juvenile courts continue to have discretionary authority to impose registration and notification requirements on juvenile sex offenders. R.C. 2152.82.

{¶48} In the present matter, B.D. was not classified as an automatic juvenile registrant under R.C. 2152.86, which is applicable to certain "serious youthful offenders," but instead was classified subject to the discretion of the trial court, pursuant to R.C. 2152.82. Therefore, the Ohio Supreme Court's finding that R.C. 2152.86 is unconstitutional does not warrant reversal of the trial court's finding that B.D. is a Tier III sex offender. As discussed above, although there are some concerns about the applicability of *In re C.P.*, where the juvenile is classified under R.C. 2152.82, such a classification is constitutional at the present time.

{¶49} The majority asserts that the foregoing discussion of *In re C.P.* is advisory. Advisory opinions include those that give advice to the parties, do not affect the matters at issue in the case before the court, or rule on issues that are moot. *Indiana Ins. Co. v. M.D.O. Homes, Inc.*, 11th Dist. No. 2000-L-167, 2001 Ohio App. LEXIS 5434, * 5 (Dec. 7, 2001); *State v. Ramirez*, 135 Ohio App.3d 89, 97, 732 N.E.2d 1065 (11th Dist.1997). The analysis in this opinion does not fall under the description of advisory opinions. As noted previously, the applicability of *In re C.P.* was brought into question by the

appellant and needs to be addressed in order to fully respond to his arguments. This opinion does not give advice but simply addresses whether *In re C.P.* is applicable to the circumstances of this type of case and, to reach such a determination, evaluates that decision.

{¶50} The majority dismissively contends that *In re C.P.* is inapplicable and, therefore, should not be considered, but a more detailed analysis of its applicability is required. While the syllabus in *In re C.P.* states that the Eighth Amendment is violated as it applies to automatic, lifelong juvenile sex offenders, the opinion makes broad, lengthy statements regarding concerns of confidentiality as they relate to juvenile sex offenders in general. This necessitates a further discussion by this court regarding whether *In re C.P.*'s holding was limited only to registrants under R.C. 2152.86 in order to ensure that the law was properly applied in the present case.

{¶51} While the Ohio Supreme Court ultimately directly decided the constitutionality of R.C. 2152.86 in *In re C.P.*, the majority decision by the Ohio Supreme Court contains a lengthy discussion and legal analysis of the need for maintaining confidentiality in juvenile sex offender registration cases. While the majority may attempt to miscast the cogent recognition of the Ohio Supreme Court majority's discussion and analysis of this important issue, it would be judicial myopathy to turn a blind eye to the importance of the *In re C.P.* decision.

{¶52} For that reason, recognition and discussion of the *In re C.P.* decision in the context of this appeal is both legally necessary and intellectually warranted. Providing the lower courts within our jurisdiction a clear understanding of the law is a

function of this appellate court, and hardly advisory obiter dicta. For examples of advisory obiter dicta, *see Anderson v. Wojtasik*, 11th Dist. No. 2011-G-3039, 2012-Ohio-2119 (where after finding that it did not have jurisdiction, the court still made an additional holding as to an issue that did not affect the outcome of the case, was not before the court, and was not necessary to resolve the matter); *Snype v. Cost*, 11th Dist. No. 2012-P-0001, 2012-Ohio-3892 (where the court, after finding that the assignments of error were unintelligible and no proper errors were raised, attempted to address the merits of such errors).

{¶53} For the foregoing reasons, I respectfully concur with the decision upholding B.D.'s Tier III juvenile offender registrant classification.