

[Cite as *State v. Ashford*, 2010-Ohio-1681.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO

:

Plaintiff-Appellee

:
C.A. CASE NO.
23311

v.

: T.C. NO. 08
CR 4641

FREDDY ASHFORD

:

(Criminal appeal from
Common Pleas Court)

Defendant-Appellant

:

:

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OPINION

Rendered on the 16th day of April, 2010.

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FROELICH, J.

{¶ 1} Freddy Ashford pled no contest in the Montgomery County Court of Common

Pleas to failing to notify the sheriff of his change of address, in violation of R.C. 2950.05(A) and (F)(1). These statutes provide that an offender who is required to register under Senate Bill 10 (Ohio’s version of the federal Adam Walsh Child Protection and Safety Act of 2006) “shall provide notice of any change of residence *** to the sheriff with whom the offender *** most recently registered the address ***,” R.C. 2950.05(A), and that no one who is required to notify the sheriff of a change of address shall fail to do so, R.C. 2950.05(F)(1). Ashford’s duty to notify stemmed from a prior conviction for rape, a “sexually oriented offense” under Senate Bill 10 and a first degree felony. The trial court found Ashford guilty and sentenced him to a minimum term of three years in prison, noting that the prison sentence was mandatory under the felony sentencing statutes.

{¶ 2} Ashford appeals from his sentence. His sole assignment of error states:

{¶ 3} “THE TRIAL COURT ERRED IN SENTENCING DEFENDANT TO A MANDATORY THREE YEAR SENTENCE UNDER THE FELONY SENTENCING STATUTES AS OPPOSED TO SENTENCING THE DEFENDANT UNDER THE RELEVANT SEX OFFENDER STATUTE.”

{¶ 4} Ashford claims that his sentence for failing to notify is governed solely by the sentencing scheme established for that offense in R.C. 2950.99.

{¶ 5} R.C. 2950.99(A)(1)(a) sets forth the degree of the offense for first-time violations of R.C. 2950.05. It provides, in part:

{¶ 6} “Except as otherwise provided in division (A)(1)(b)¹ of this section, whoever violates a prohibition in section *** 2950.05 *** of the Revised Code shall be

¹R.C. 2950.99(A)(1)(b), which is not applicable, sets forth the degree of the offense for subsequent violations of R.C. 2950.05.

punished as follows:

{¶ 7} ****

{¶ 8} “(ii) If the most serious sexually oriented offense *** that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the first, second, third, or fourth degree ***, the offender is guilty of a felony of the same degree as the most serious sexually oriented offense *** that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition, ***.” R.C. 2950.99(A)(1)(a) (footnote added). Therefore, since the offense that was the basis of the notification requirement, rape, was a felony of the first degree, his violation of R.C. 2950.05 was likewise a felony of the first degree.

{¶ 9} Although R.C. 2950.99(A)(2)(b) imposes a minimum mandatory prison sentence for certain repeat offenders, R.C. 2950.99(A) does not address the appropriate sentence for a defendant who, for the first time, has violated R.C. 2950.05.

{¶ 10} Ashford was required to notify the sheriff of his change of address due to a conviction for rape, a first degree felony. In accordance with R.C. 2950.99(A)(1)(a), Ashford’s violation of R.C. 2950.05 was likewise a first degree felony. Because R.C. 2950.99 did not address, much less mandate, the sentence for a first-time violator of R.C. 2950.05, the trial court appropriately turned to the felony sentencing statutes to determine Ashford’s sentence.

{¶ 11} The sentencing range for a first degree felony is three to ten years.

R.C. 2929.14. R.C. 2929.13(F)(6) requires the prison to be mandatory if, as in Ashford’s case, “the offender previously was convicted of or pleaded guilty to *** any first or second degree felony ***.” Since Ashford was found guilty of failure to notify, a first degree felony, and had previously been convicted of a first degree felony (rape), his sentence was mandatory. Accordingly, the trial court did not err in sentencing Ashford to a mandatory, three-year prison term.

{¶ 12} The assignment of error is overruled.

{¶ 13} The judgment of the trial court will be affirmed.

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DONOVAN, P.J. and BROGAN, J., concur.

Copies mailed to:

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Hon. Michael T. Hall