

[Cite as *State v. Green*, 2010-Ohio-3448.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NOS. 23326, 23307
vs.	:	T.C. CASE NOS. 08CR4436 08CR1750
JOHNNY D. GREEN	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 19<sup>th</sup> day of July, 2010.

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GRADY, J.:

{¶ 1} Defendant, Johnny Green, appeals from his conviction and sentence for failure to notify, R.C. 2950.05, and failure to verify, R.C. 2950.06, duties imposed on him resulting from his reclassification as a Tier II sex offender pursuant to R.C. 2950.031.

{¶ 2} On June 12, 1996, Defendant was convicted on his pleas of guilty to two charges of unlawful sexual conduct with a minor.

Following his incarceration, the trial court classified Defendant as a sexually-oriented offender pursuant to Ohio's version of "Megan's Law," which became effective on July 1, 1997. His classification required Defendant to register as a sex offender once each year for a period of ten years following his release from prison.

{¶ 3} Defendant was released from prison on July 30, 1997. The registration duties the court imposed on him would therefore expire on July 30, 2007. However, and before that date, Defendant was notified by the Attorney General of his reclassification as a Tier II sex offender pursuant to R.C. 2950.031. His reclassification required Defendant to register once every six months and to promptly notify authorities of any change in his address or employment within those periods, for a term of twenty-five years. On May 1, 2008, Defendant signed a written acknowledgment of his Tier II reclassification and the duties it imposed.

{¶ 4} Following his reclassification, Defendant was indicted on charges arising from his failure to comply with duties his reclassification imposed. On May 12, 2008, Defendant was indicted in Case No. 08-CR-1750 on two counts of failure to notify, R.C.

2950.05. On November 20, 2008, Defendant was indicted in Case No. 08-CR-4436 on one count of failure to verify, R.C. 2950.06.

The dates of those alleged offenses were subsequent to July 31, 2007, the date on which Defendant's duties of registration pursuant to his former classification would have expired.

{¶5} Defendant moved to dismiss his indictments on multiple constitutional grounds. The trial court overruled the motion. On February 18, 2009, Defendant entered no contest pleas to the charges in the two indictments. The trial court accepted his pleas, found him guilty, and sentenced Defendant to concurrent three-year prison terms for two offenses. Defendant filed a notice of appeal.

{¶6} Defendant presents multiple assignments of error challenging his convictions. Those challenges are resolved by the recent decision of The Supreme Court of Ohio in *State v. Bodyke*, \_\_\_ Ohio St.3d \_\_\_, 2010-Ohio-2424. *Bodyke* held that the reclassification provisions of R.C. 2950.031, and the parallel reclassification provisions of R.C. 2950.032, unconstitutionally require a member of the executive branch, the Attorney General, to review and modify past judgments of the judicial branch that had classified sex offenders under the former law. The court ordered R.C. 2950.031 and 2950.032 severed from the R.C. Chapter 2950 statutory scheme, holding that those provisions may not be

applied to offenders who were classified under the former law, which as a result are reinstated. *Id.*, at ¶66.

{¶7} Defendant's convictions for violations of R.C. 2950.05 and 2950.06 arose from his reclassification as a Tier II sex offender pursuant to R.C. 2950.031. Because Defendant had previously been classified by a court as a sexually-oriented offender under the former law, R.C. 2950.031 may not be applied to reclassify him. *Bodyke*. Therefore, Defendant cannot be criminally liable for conduct that includes a voluntary act or omission that violates R.C. 2950.05 or 2950.06, and not being criminally liable he is not guilty of those violations. R.C. 2901.21(A)(1). Neither does Defendant remain subject to the registration requirements his former classification imposed, those requirements having expired on July 30, 2007.

{¶8} None of the five assignments of error presented by Defendant in his brief on appeal raise the "separation of powers" defect on which *Bodyke* was decided. We may notice plain error or defects affecting substantial rights although they were not brought to our attention. Crim.R. 52(B). Plain error does not exist unless it can be said that but for the error, the outcome of the trial would clearly have been otherwise. *State v. Long* (1978), 53 Ohio St.2d 91.

{¶9} Defendant was found guilty and convicted on his pleas

of no contest, but a no contest plea does not waive plain error.

*City of Huber Heights v. Duty* (1985), 27 Ohio App.3d 244. On this record, and pursuant to the holding in *Bodyke*, the trial court's findings that Defendant is guilty of the violations of R.C. 2950.05 and 2950.06 alleged in his indictments constitute plain error. Having found plain error, we will reverse and vacate Defendant's convictions and order Defendant discharged on the offenses those convictions involve.

DONOVAN, P.J. And RINGLAND, J., concur.

(Hon. Robert P. Ringland, Twelfth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.)

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