[Cite as *State v. Jones*, 2008-Ohio-6078.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO	)	CASE NO. 07 MA 58
	)	
PLAINTIFF-APPELLEE	)	
	)	
VS.	)	OPINION
	)	
JERMAINE JONES	)	
	)	
DEFENDANT-APPELLANT	)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from the Court of Common Pleas of Mahoning County, Ohio Case No. 06 CR 983
JUDGMENT:	Dismissed.
APPEARANCES:	
For Plaintiff-Appellee:	Atty. Paul J. Gains Mahoning County Prosecutor Atty. Rhys B. Cartwright-Jones Assistant Prosecuting Attorney 21 West Boardman Street, 6th Floor Youngstown, Ohio 44503
For Defendant-Appellant:	Atty. Katherine E. Rudzik 26 Market Street, Suite 904 Youngstown, Ohio 44503
JUDGES:	
Hon. Cheryl L. Waite Hon. Gene Donofrio Hon. Mary DeGenaro	
	Dated: November 18, 2008

[Cite as *State v. Jones*, 2008-Ohio-6078.]
WAITE, J.

{¶1} On December 21, 2006, Defendant-Appellant Jermaine A. Jones was convicted of one count of unlawful sexual conduct with a minor, in violation of R.C. 2907.04(A), (B)(3), a felony of the third degree, for engaging in oral sex with a fourteen year old girl.

{¶2} In his sole assignment of error, Appellant contends that the trial court's decision classifying him as a "sexual predator" was against the manifest weight of the evidence. Appellant argues that the trial court failed to establish by clear and convincing evidence that he was likely to engage in sexually oriented offenses in the future, which is an essential element in the "sexual predator" classification.

{¶3} We find that this appeal is nonjusticiable because the Ohio General Assembly passed legislation, which took effect on July 1, 2007, that requires all registered sex offenders be reclassified by the Attorney General based solely on their offense of conviction. See R.C. 2950.031. As a consequence, the issue raised by Appellant on appeal is moot.

Assignment of Error

{¶4} "THE TRIAL COURT'S CLASSIFICATION OF DEFENDANT-APPELLANT JERMAINE JONES AS A SEXUAL PREDATOR IS AGAINST THE MANIFEST WEIGHT OF EVIDENCE AS THE STATE FAILED TO PRODUCE CLEAR AND CONVINCING EVIDENCE THAT MR. JONES IS LIKELY TO REOFFEND. (TRANSCRIPT OF SEXUAL PREDATOR AND SENTENCING HEARING, MARCH 2, 2007)."

{¶5} As a threshold issue, we must determine whether the changes in the law following Appellant's sentencing have rendered his appeal moot. On July 27, 2006, a bill known as the Adam Walsh Act was signed into law. States were required to comply with this federal legislation by July 27, 2009, or risk losing 10% of a federal law enforcement grant. The Ohio General Assembly chose to implement the Adam Walsh Act in 2007, and passed Senate Bill 10 and Senate Bill 97 in an effort to comply with the federal legislation. The Adam Walsh Act and Ohio Senate Bill 10 now organize sex offender classification into three tiers. Classification is based solely on the offense of conviction. An offender's propensity to reoffend is no longer considered.

{¶6} Because Appellant was sentenced to a term of incarceration, he was not required to register his residence information pursuant to the former R.C. 2950.04. (Sexual Predator and Sentencing Hearing Tr., p. 10.) However, the trial court directed the official in charge of the institution where Appellant is incarcerated to gather his residence information and forward it to the Sheriff's Office in the county in which Appellant intends to reside upon his release. (3/2/07 J.E., p 2.) Therefore, Appellant's reclassification under the new law is addressed by R.C. 2950.032.

{¶7} R.C. 2950.032(A)(1), captioned "Determination of sex offender classification tier for those serving prison term; juvenile offender; hearing; notice," reads, in pertinent part:

{¶8} "At any time on or after July 1, 2007, and not later than December 1, 2007, the attorney general shall do all of the following:

{¶9} "(a) For each offender who on December 1, 2007, will be serving a prison term in a state correctional institution for a sexually oriented offense or child-victim oriented offense, determine the offender's classification relative to that offense as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes in that chapter that will be implemented on January 1, 2008, and the offender's duties under Chapter 2950. of the Revised Code as so changed and provide to the department of rehabilitation and correction a document that describes that classification and those duties* * *"

{¶10} Pursuant to R.C. 2950.032(A)(2)(a)-(c), the Attorney General must provide to the offender notice of the changes in the law, the offender's new classification, the duties required under the new classification, and the offender's right to a hearing. The changes in Chapter 2950 were implemented on January 1, 2008.

{¶11} Turning to the case before us, we note that, " 'a case is moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome.' " *County of Los Angeles v. Davis* (1979), 440 U.S. 625, 631, 99 S.Ct. 1379, 59 L.Ed.2d 642 (quoting *Powell v. McCormack* (1969), 395 U.S. 486, 496, 89 S.Ct. 1944, 23 L.Ed.2d 491.)

{¶12} "No actual controversy exists where a case has been rendered moot by an outside event. 'It is not the duty of the court to answer moot questions, and when, pending proceedings in error in this court, an event occurs without the fault of either

party, which renders it impossible for the court to grant any relief, it will dismiss the petition in error.'" *Tschantz v. Ferguson* (1991), 57 Ohio St.3d 131,133 566 N.E.2d 655 (*quoting Miner v. Witt* (1910), 82 Ohio St. 237, 92 N.E. 21, syllabus.) "A cause will become moot only when it becomes impossible for a tribunal to grant meaningful relief, even if it were to rule in favor of the party seeking relief." *Joys v. Univ. of Toledo* (April 29, 1997), 10th Dist. No. 96APE08-1040, 3, citing *Miner* at 238-239.

{¶13} Here, the decision of the trial court classifying Appellant as a "sexual predator" never had any practical effect on Appellant. Because he was incarcerated, he could not and did not undertake any of the duties listed in R.C. Chapter 2950. Appellant does not dispute that he is subject to this Chapter; he merely wishes to have the pre-Adam Walsh Act version applied to him. The current version of R.C. 2950.01(F) states that a "Tier II sex offender/child-victim offender" includes a sex offender who has been convicted of, "[a] violation of section 2907.04 of the Revised Code when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct* * *." Based on this, Appellant was reclassified as a Tier II sex offender by the Attorney General on January 1, 2008.

{¶14} Our review of this matter leads to the conclusion that with the passage of Senate Bill 10 and Appellant's subsequent reclassification as a Tier II sex offender, Appellant no longer has "a legally cognizable interest in the outcome" in this appeal. See *County of Los Angeles v. Davis*, supra. Prior to the enactment of Senate Bill 10, Appellant's classification would have subjected him to the strictest requirements in R.C. Chapter 2950 following his release from jail. Because during his incarceration

the requirements of this Chapter do not impose any duties on Appellant, his sexual predator classification had no substantive effect. In addition, even if we reversed the decision of the lower court and remanded the matter, the trial judge would be required to classify Appellant under the new law. Therefore, reversal cannot result in "meaningful relief." *Joys*, supra, at least regards Appellant's stated issue.

{¶15} At oral argument, Appellant asked us to resolve the substantive issue in order to preserve the issue for an appeal to the Ohio Supreme Court. However, Appellant has preserved the substantive issue for appeal merely by raising it before this Court. Accordingly, we find that this appeal is moot.

Donofrio, J., concurs.

DeGenaro, P.J., concurs.