

[Cite as *In re D.C.*, 2016-Ohio-8550.]

STATE OF OHIO, HARRISON COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

IN THE MATTER OF:

D.C.

)
)
)
)
)
)
)
)

CASE NO. 15 HA 0006

OPINION

CHARACTER OF PROCEEDINGS:

Appeal from the Court of Common
Pleas, Juvenile Division of Harrison
County, Ohio
Case No. 20142018

JUDGMENT:

Affirmed.

APPEARANCES:

For State-Appellee

Attorney T. Owen Beetham
Harrison County Prosecutor
111 West Warren Street
P.O. Box 248
Cadiz, Ohio 43907

For Minor-Appellant

Attorney Timothy Young
Ohio Public Defender
Attorney Brooke Burns
Assistant Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215

JUDGES:

Hon. Mary DeGenaro
Hon. Cheryl L. Waite
Hon. Carol Ann Robb

Dated: December 22, 2016

[Cite as *In re D.C.*, 2016-Ohio-8550.]
DeGENARO, J.

{¶1} D.C., a minor child, appeals the juvenile court's decision denying his motion to vacate his sex offender classification. He contends that the juvenile court failed to comply with the timing requirements of R.C. 2152.83 rendering his classification order void. As the juvenile court did comply with the statute, D.C.'s argument is meritless, and it follows that we need not engage in the void versus voidable debate. Accordingly, the juvenile court's judgment is affirmed.

{¶2} The State filed a complaint charging D.C. with rape, R.C. 2907.02(A)(1)(b), a first degree felony if committed by an adult; at the adjudication hearing it was proffered that D.C. committed numerous acts of oral and anal rape over a six month period upon the five year old victim. On June 23, 2014, D.C. entered an admission to the complaint as charged, was adjudicated delinquent and placed in the custody of the Ohio Department of Youth Services for an indefinite term consisting of a minimum of one year and a maximum period not to exceed D.C. turning 21. He was ordered to complete the sexual offender program and counseling offered by DYS and to return in approximately ten months for a sexual offender classification hearing. D.C. was transported to DYS on July 1, 2014. This judgment was not appealed.

{¶3} On July 31, 2014, D.C. returned to the juvenile court for a sex offender classification hearing. On that date the juvenile court issued two separate judgment entries. The first entry classified D.C. as a Tier III offender, and the second ordered DYS to transfer D.C. to the Paint Creek Youth Center, an unsecure facility. D.C. was transferred to Paint Creek on August 27, 2014. These judgments were not appealed.

{¶4} On May 15, 2015, D.C. moved to vacate his sex offender classification, and after a hearing, his motion was denied by the juvenile court on June 11, 2015. This was the first judgment entry regarding his classification that D.C. appealed. We held his appeal in abeyance pending the Ohio Supreme Court decision *In re D.S.*, 146 Ohio St.3d 182, 2016-Ohio-1027, 54 N.E.3d 1184, which upheld the constitutionality of the juvenile classification statute on March 16, 2016.

{¶5} In his sole assignment of error, D.C. asserts:

The Harrison County Juvenile Court erred when it denied D.C.'s motion to vacate his juvenile sex offender classification order as void.

{¶16} D.C. was 16 at the time of the offense. Thus, R.C. 2152.83 dictates when the juvenile court was required to classify D.C. "The court that adjudicates a child a delinquent child shall issue as part of the dispositional order or, if the court commits the child for the delinquent act to the custody of a secure facility, shall issue at the time of the child's release from the secure facility an order that classifies the child a juvenile offender registrant [.]" R.C. 2152.83(A)(1). The meaning of "at the time of * * * release" as utilized in R.C. 2152.83(A)(1) is not specifically defined in the Ohio Revised Code.

{¶17} D.C. argues that because the juvenile court classified him on July 31 instead of the actual date he was transferred from DYS to Paint Creek on August 27, 2014—this was error and a sanction unauthorized by law. As such, he contends that his classification was void and must be vacated. The State argues D.C. is attempting an impermissible collateral attack on his sex offender classification, that any alleged error makes the classification voidable, and is only subject to review on direct appeal.

{¶18} We need not wade into the quagmire of whether this order was void or voidable,¹ because we hold that there was no error in the first instance. An appellate court should not address a moot assignment of error as to do so would not be in the

¹ "Not so long ago, *res judicata* would have barred this action. Now, because of the quagmire created in the void/voidable line of cases...We can easily avoid the judicial obstacle course arising from the void-sentence doctrine by simply clarifying that mistakes in imposing sentences make the sentence merely voidable—that is, subject to being reversed on direct appeal. "*State v. Billiter*, 134 Ohio St.3d 103, 2012-Ohio-5144, 980 N.E.2d 960, ¶15 (Lanzinger, J., concurring in part and dissenting in part).

On November 10, 2016 the Ohio Supreme Court again addressed the void versus voidable dichotomy and "lurches in yet a new direction. Declaring that failure to properly merge allied offenses causes a sentence to be void, or partly void, the court uses language that may be stretched to say that *any* mistake in sentencing results in a void or at least partly void sentence. On this point, *res judicata* is nearly dead. It is no news that the appellate courts have noted inconsistencies in this court's application of the void and voidable concepts and in response have called for continuity. See, e.g., *State v. Holcomb*, 184 Ohio App.3d 577, 2009-Ohio-3187, 921 N.E.2d 1077 (9th Dist.); *State v. Walker*, 5th Dist. Richland No. 15CA104, 2016-Ohio-1462, 2016 WL 1378353; *State v. Mitchell*, 187 Ohio App.3d 315, 2010-Ohio-1766, 931 N.E.2d 1157 (6th Dist.)." *State v. Williams*, 2016-Ohio-7658, — N.E.3d — Slip Opinion, ¶ 62-63 (Lanzinger, J., dissenting).

interest of judicial economy. App.R. 12(A)(1)(c). Moreover, such an opinion would be advisory.

{¶9} The Second District considered the timing language from R.C. 2152.83 and determined the juvenile court acted reasonably when it held the classification hearing less than two months after the date the child was released from a secure facility, reasoning that the statutory phrase "at the time of the child's release from the secure facility"

necessarily incorporates a short interval of time (here, two and a half months, and not thirteen) before jurisdiction is lost. Clearly, the legislature did not intend to mandate a classification simultaneous with release, but merely within a reasonable time given docket constraints and appropriate time for evaluations appurtenant to classification.

In re B.W., 2d Dist. No. 1702, 2007-Ohio-2096, ¶ 14.

{¶10} The Third District was persuaded by this rationale, concluding that a classification hearing held seven months after the juvenile's release from a secure facility was reasonable and comported with R.C. 2152.83. *In re Smith*, 3rd Dist. No. 1–07–58, 2008-Ohio-3234, ¶ 14, 18, sub nom. *In re D.J.S.*, 130 Ohio St.3d 257, 2011-Ohio-5342, 957 N.E.2d 291.

{¶11} In denying D.C.'s motion to vacate, the juvenile court provided thoughtful insight to the issue presently before us:

The youth now argues that the timing of the transfer voided his classification hearing as it was not "at the time of the child's release from the secure facility." When asked in Court, the youth's attorney ceded the point that there is not a set time established by the statute on when a release or transfer must occur to be proper. She would suggest less than one week, but admitted that the Ohio Public Defender's Office and DYS were not in agreement on this issue of timing. Further, when

asked, was it not better to hold the classification hearing so that the youth may be transferred to attend treatment rather than staying in a secured placement with limited to no treatment, all were in agreement that it was in the youth's best interest to gain treatment. However, the youth's argument has a chilling effect on public policy as courts may stop transferring youth for treatment and rather leave them in a secured facility so not to have to deal with this issue of "when is a release" when the court is at the total dependence on when DYS decides to move the youth and risk the potential for a void classification hearing.

{¶12} We are persuaded with the rationale of *B.W.*, and hold that the juvenile court complied with the timing requirements of R.C. 2152.83(A)(1). D.C. was released a mere 27 days after his classification hearing, a reasonable time period in light of docketing and transportation considerations. As there was no error by the juvenile court there is no basis for D.C.'s motion to vacate.

{¶13} D.C. further argues that juvenile court erred in failing to exercise discretion when it classified D.C. as a tier III juvenile sex offender. This argument should have been raised in a direct appeal from the July 31, 2014 classification entry not by collateral attack. As such, it is *res judicata*.

{¶14} In sum, the juvenile court complied with R.C. 2152.83 by holding D.C.'s classification hearing within a reasonable time to take into account sufficient transportation time and docket constraints. Accordingly, the judgment of the juvenile court is affirmed.

Waite, J., concurs.

Robb, J., concurs.