

[Cite as *State v. Johnson*, 2011-Ohio-2009.]

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 10AP-932
v.	:	(C.P.C. No. 96CR10-5406)
	:	
Nathaniel K. Johnson,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	

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D E C I S I O N

Rendered on April 26, 2011

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*Ron O'Brien*, Prosecuting Attorney, and *Steven L. Taylor*, for appellant.

*Yeura R. Venters*, Public Defender, and *Paul Skendelas*, for appellee.

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APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Appellant, state of Ohio, filed this appeal seeking reversal of a judgment by the Franklin County Court of Common Pleas granting a petition filed by appellee, Nathaniel K. Johnson, challenging his reclassification as a Tier III sex offender under the Adam Walsh Act. For the reasons that follow, we affirm.

{¶2} Appellee pleaded guilty in 1997 to one count of rape and was sentenced to a term of three years of incarceration. The trial court that imposed the sentence specifically found that appellee was not a sexual predator. Under the version of R.C. 2950.01 in effect at the time, appellee was required as a matter of law to register as a sexually oriented offender for a period of ten years.

{¶3} After the enactment of the Adam Walsh Act, appellee was sent a notification by the Attorney General of Ohio informing him that he would now be classified as a Tier III sex offender with new reporting and notification requirements associated with that classification. Appellee filed a petition, pursuant to R.C. 2950.031 and 2950.032, seeking to challenge the new classification. The state filed a memorandum contra and subsequently filed a supplemental memorandum contra.

{¶4} The trial court held a consolidated hearing on a number of petitions that had been filed, including appellee's. The court concluded that the petitions should be granted on the authority of the decisions by the Supreme Court of Ohio in *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, and *Chojnacki v. Cordray*, 126 Ohio St.3d 321, 2010-Ohio-3212. The court vacated appellee's reclassification and reinstated the previous classification and registration orders, concluding in its entry that "[t]he requirements imposed upon the Petitioner by the Adam Walsh Act are a nullity."

{¶5} The state filed this appeal, and asserts three assignments of error:

#### **FIRST ASSIGNMENT OF ERROR**

THE COMMON PLEAS COURT ERRED IN GRANTING RELIEF ON THE BASIS OF A PETITION THAT WAS FILED PURSUANT TO A SPECIAL STATUTORY PROCEEDING THAT HAS NOW BEEN SEVERED IN ITS ENTIRETY BY THE OHIO SUPREME COURT.

### SECOND ASSIGNMENT OF ERROR

THE COMMON PLEAS COURT ERRED IN AWARDING RELIEF BASED ON *STATE v. BODYKE* IN THE ABSENCE OF A PRIOR JUDICIAL CLASSIFICATION.

### THIRD ASSIGNMENT OF ERROR

THE COMMON PLEAS COURT ERRED IN DECLARING THAT "THE REQUIREMENTS IMPOSED UPON THE PETITIONER BY THE ADAM WALSH ACT ARE A NULLITY."

{¶6} In its first assignment of error, the state argues that in *Bodyke* and *Chojnacki*, the Supreme Court of Ohio severed R.C. 2950.031 and 2950.032 in their entirety, and the severance of those statutory provisions meant that the trial court had no jurisdiction to consider petitions filed pursuant to those sections. In *Bodyke*, the court concluded that R.C. 2950.031 and 2950.032, which provided for reclassification of sex offenders by the Attorney General of Ohio, were unconstitutional because they violated the separation of powers by allowing an executive branch official to change a judicially made designation regarding a defendant's sex offender status. *Bodyke* at ¶2. The court concluded that the appropriate remedy was to sever R.C. 2950.031 and 2950.032 and return those defendants who had been reclassified by the attorney general to their previous judicially designated status. *Id.*

{¶7} Shortly after *Bodyke* was decided, the court clarified the scope of the *Bodyke* remedy in *Chojnacki*. The issue in *Chojnacki* was whether the denial of appointed counsel to a party seeking to challenge a reclassification by filing a petition as set forth in R.C. 2950.031 and 2950.032 constituted a final appealable order. The court

concluded that after the severance of R.C. 2950.031 and 2950.032 in *Bodyke*, any issues regarding the petition process for challenging a reclassification were moot. *Chojnacki* at ¶6.

{¶8} In our post-*Bodyke* and *Chojnacki* cases, we have consistently rejected the argument posited by the state in its first assignment of error. In doing so, "[w]e have consistently recognized that, notwithstanding the severance of the statutory provisions under which the reclassification petitions were filed, petitioners such as appellee are entitled to orders directing their return to those previous classifications." *Hosom v. State*, 10th Dist. No. 10AP-671, 2011-Ohio-1494, ¶8, citing *State v. Watkins*, 10th Dist. No. 09AP-669, 2010-Ohio-4187; *State v. Miliner*, 10th Dist. No. 09AP-643, 2010-Ohio-6117; *State v. Hazlett*, 10th Dist. No. 09AP-1069, 2010-Ohio-6119; *Core v. State*, 10th Dist. No. 09AP-192, 2010-Ohio-6292; *Cook v. State*, 10th Dist. No. 10AP-641, 2011-Ohio-906. See also *Robinson v. State*, 10th Dist. No. 10AP-647, 2011-Ohio-1600.

{¶9} Given this precedent, the trial court did not err in granting appellee's petition challenging his reclassification. Consequently, the state's first assignment of error is overruled.

{¶10} In its second assignment of error, the state argues that appellee was not entitled to relief under *Bodyke* because his original classification as a sexually oriented offender arose as a matter of law, rather than as a result of a judicial determination. For its contention that appellee's original sex offender classification arose as a matter of law, the state points to *State v. Hayden*, 96 Ohio St.3d 211, 2002-Ohio-4169.

{¶11} *Hayden* involved a challenge to the sexual offender registration provisions set forth in R.C. Chapter 2950 prior to the Adam Walsh Act revisions to those

provisions. Under the then existing R.C. 2950.01, defendants convicted of sexually oriented offenses as defined in the statute fell into one of three categories: sexual predators, habitual sex offenders, and sexually oriented offenders. Under the statute, a defendant convicted of a sexually oriented offense could not be determined to be a sexual predator or a habitual sex offender unless the trial court first held a hearing.

{¶12} The trial court found the defendant in *Hayden* to be a sexually oriented offender without first holding a hearing, and the defendant challenged that conclusion on the grounds that the lack of a hearing violated his due process rights. The Supreme Court found no due process violation because "if a defendant has been convicted of a sexually oriented offense as defined in R.C. 2950.01(D) and is neither a habitual sex offender nor a sexual predator, the sexually oriented offender designation attaches as a matter of law." *Hayden* at ¶18.

{¶13} In this case, the state argues that appellee's original classification as a sexually oriented offender arose as a matter of law as a result of the trial court's failure to designate him as either a sexual predator or a habitual sex offender. The state argues that because appellee's classification did not involve a judicial determination, *Bodyke's* conclusion that the attorney general's act of changing a previously made judicial determination violates the constitutional separation of powers is not implicated in appellee's case.

{¶14} Initially, we question the state's argument that appellee's designation as a sexually oriented offender was not the result of a judicial determination. In its sentencing entry, the trial court specifically concluded by clear and convincing evidence that appellee was not a sexual predator, but did not specifically conclude that appellee

was a sexually oriented offender, nor did it mention the habitual sex offender classification. The effect of the trial court's entry was that appellee's conviction of the sexually oriented offense of rape meant that, by default, appellee would be designated a sexually oriented offender. Because appellee's classification as a sexually oriented offender resulted from a specific judicial determination, we believe appellee was among those offenders to which *Bodyke's* concern regarding separation of powers would apply.

{¶15} Furthermore, even if appellee's classification as a sexually oriented offender did not arise from a specific judicial determination to which *Bodyke* would apply, we have nevertheless recognized that offenders whose pre-Adam Walsh Act classification arose purely as a matter of law still must receive the benefit of the *Bodyke* remedy returning those offenders to their pre-Adam Walsh Act classifications because of *Bodyke's* complete severance of the statutory provisions governing reclassification by the attorney general. See *Core* (applying *Bodyke* to a case in which the offender's classification resulted from an out-of-state conviction); *Hazlett* (applying *Bodyke* to a case in which the offender was never judicially classified and whose classification therefore arose purely as a matter of law).

{¶16} Consequently, the trial court did not err when it rejected the state's contention that *Bodyke* did not apply to appellee's case because his sex offender classification arose as a matter of law. Therefore, the state's second assignment of error is overruled.

{¶17} In its third assignment of error, the state argues that the trial court erred when it concluded that the new reporting requirements imposed on appellee by the Adam Walsh Act were a nullity. The state argues that some of the changes to reporting

requirements included in the Adam Walsh Act would apply regardless of the offender's specific classification. As examples, the state points to the reduction of time within which an offender changing residency to a different county must register in the new county from five days to three, as well as inclusion of new information that must be provided by a sex offender, such as travel and immigration documents, social security numbers, and information regarding vehicles owned, registered, or available to the offender.

{¶18} However, the Supreme Court of Ohio has recently made it clear that *Bodyke* not only applied to return pre-Adam Walsh Act offenders to their prior classifications, but also returned those offenders to their pre-Adam Walsh Act reporting requirements. In *State v. Gingell*, \_\_\_ Ohio St.3d \_\_\_, 2011-Ohio-1481 (slip opinion), the court considered a case involving a sex offender convicted for violating a reporting requirement imposed by the Adam Walsh Act that required Tier III offenders to verify their addresses every 90 days. The court considered the application of *Bodyke* to *Gingell*'s case and concluded that "pursuant to *Bodyke*, *Gingell*'s original classification under Megan's Law and the associated community-notification and registration order were reinstated." *Gingell* at ¶8.

{¶19} Consequently, *Bodyke* and *Gingell* make it clear that none of the Adam Walsh Act provisions, including the new reporting requirements, can be applied to appellee. Thus, the state's argument that some new Adam Walsh Act reporting requirements apply to appellee is without merit. Therefore, the state's third assignment of error is overruled.

{¶20} Having overruled appellant's three assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BRYANT, P.J., and DORRIAN, J., concur.

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