

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Antoine L. Smith,	:	
	:	
Petitioner-Appellant,	:	
	:	No. 10AP-646
v.	:	(C.P.C. No. 09MS-08-539)
	:	
State of Ohio,	:	(REGULAR CALENDAR)
	:	
Respondent-Appellee.	:	

D E C I S I O N

Rendered on May 19, 2011

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

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

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, P.J.

{¶1} Petitioner-appellant, Antoine L. Smith, appeals from a judgment of the Franklin County Court of Common Pleas dismissing as moot his petition to contest his sexual offender reclassification under Ohio's Adam Walsh Act ("Ohio AWA"). Appellant assigns a single error:

The trial court erred in dismissing Appellant's reclassification petition as moot in lieu of granting judgment in his favor,

following the decision of the Ohio Supreme Court in *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424.

Because the trial court erred in dismissing appellant's petition as moot, we reverse.

I. Facts and Procedural History

{¶2} Appellant was convicted in 1997 in the Logan County Court of Common Pleas of unlawful conduct with a minor. Pursuant to R.C. Chapter 2950 then in effect ("Megan's Law"), the Logan County Court of Common Pleas held a hearing in 2004 to determine whether appellant should be designated a sexual predator. Because the court concluded appellant was not a sexual predator, he was classified a sexually oriented offender under the provisions of Megan's Law. The classification subjected appellant to registration requirements once he completed his sentence.

{¶3} Congress passed the Adam Walsh Child Protection and Safety Act ("AWA") in 2006. See 42 U.S.C.A. §16901 et seq. The AWA created national standards for sexual offender classification, including registration and community notification requirements. In 2007, Ohio enacted its version of the AWA in Am.Sub.S.B. No. 10, effective January 1, 2008. Ohio's AWA repealed the sexual offender registration established under Megan's Law, which utilized three classifications, "sexually orientated offender," "habitual sexual offender," and "sexual predator." The new law replaced them with a new three-tiered system.

{¶4} R.C. 2950.031 of Ohio's AWA required the attorney general, using the three-tiered system, to reclassify Megan's Law sexual offenders who had a registered address; R.C. 2950.032 required the attorney general, using the same three tiers, to reclassify such sexual offenders serving a prison term. The attorney general further was

required to send notification letters to offenders regarding their new tier classification and duties.

{¶5} Sometime after 2004, appellant moved to Franklin County and began registering as a sexually oriented offender with the Franklin County Sheriff. Pursuant to R.C. 2950.031, the Ohio Attorney General notified appellant he would be classified, pursuant to Am.Sub.S.B. No. 10, as a Tier III sex offender. As such, he would be required to register personally with the sheriff every 90 days for life and be subject to community notification.

{¶6} On August 5, 2009, appellant filed in the Franklin County Court of Common Pleas a "Petition to Contest Reclassification and Application of R.C. Chapter 2950." On that same date, appellant also filed a motion to stay enforcement of the community notification requirement under Ohio's AWA. The trial court granted the motion to stay, pending resolution of appellant's petition.

{¶7} The Supreme Court of Ohio decided *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, on June 3, 2010, concluding "R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders who have already been classified by court order under former law, impermissibly instruct the executive branch to review past decisions of the judicial branch and thereby violate the separation-of-powers doctrine." *Id.* at paragraph two of the syllabus. In response to *Bodyke*, the trial court issued a decision and entry dismissing as moot appellant's petition to contest his reclassification. The court concluded that because the Supreme Court declared the provisions of Am.Sub.S.B. No. 10 "authorizing the reclassification of sex offenders including petitioner are unconstitutional, this petition no longer presents a justiciable

issue." The court further determined *Bodyke* "reinstated prior judicial classifications of sex offenders," so that "the relief the petitioner seeks has already been granted." (R. 12.)

{¶8} Appellant timely appealed.

II. Reinstatement is Proper Remedy

{¶9} Appellant's single assignment of error asserts the trial court erred in dismissing his petition as moot. Appellant instead urges us to reverse and remand the case to the trial court, so the court may reinstate appellant to his prior status under Megan's Law. Appellant asserts that, absent a judicial declaration restoring him to his former classification, he faces unlawful community notification requirements and the potential for wrongful arrest.

{¶10} Were any doubt to exist about whether *Bodyke* severed R.C. 2950.031 and 2950.032 when it found they violate the separation-of-powers doctrine, the Supreme Court, through a six-justice majority, clarified that *Bodyke* "severed R.C. 2950.031 and 2950.032, the reclassification provisions of the Adam Walsh Act, and held that after severance, those provisions could not be enforced." *Chojnacki v. Cordrary*, 126 Ohio St.3d 321, 2010-Ohio-3212, ¶5. Because the attorney general reclassified appellant as a Tier III sex offender under R.C. 2950.031, which *Bodyke* deemed unconstitutional and unenforceable, the reclassification cannot stand.

{¶11} The state asserts that because the Supreme Court severed R.C. 2950.031 and 2950.032 from the statutory scheme, the procedures to contest classification set forth in those statutes no longer are viable, leaving the trial court without authority to entertain appellant's petition. The state thus urges us to affirm the trial court's judgment dismissing

the action, not on mootness grounds but for lack of statutory authority on which to premise such a petition.

{¶12} Addressing the state's same argument in earlier cases, this court concluded "appellant's reclassification under the severed statute must be vacated and his prior judicial classification must be reinstated." *State v. Miliner*, 10th Dist. No. 09AP-643, 2010-Ohio-6771, ¶13, 15; *Cook v. Ohio*, 10th Dist. No. 10AP-641, 2011-Ohio-906, ¶7-10. See also *State v. Hickman*, 10th Dist. No. 09AP-617, 2010-Ohio-5548, ¶5 (stating "[t]his court has repeatedly recognized that, pursuant to *Bodyke*, reclassifications made under the severed statutes are to be vacated, and the prior judicial classifications are to be reinstated"); *State v. Watkins*, 10th Dist. No. 09AP-669, 2010-Ohio-4187, ¶12-13, discretionary appeal not allowed, 128 Ohio St.3d 1413, 2011-Ohio-828; *State v. Houston*, 10th Dist. No. 09AP-592, 2010-Ohio-4374, ¶12-13, discretionary appeal not allowed, 128 Ohio St.3d 1446, 2011-Ohio-1618; *State v. Jackson*, 10th Dist. No. 09AP-687, 2010-Ohio-4375, ¶10-11, discretionary appeal not allowed, 128 Ohio St.3d 1446, 2011-Ohio-1618. See also *Majewski v. State*, 8th Dist. No. 92372, 2010-Ohio-3178, ¶13, discretionary appeal not allowed, 127 Ohio St.3d 1462, 2010-Ohio-6008 (reinstating the petitioner's original classification was "consistent with *Bodyke*"); *State v. Robins*, 2d Dist. No 23437, 2010-Ohio-2842, ¶17 (stating that "[s]ince R.C. 2950.031 and 2950.032 have been excised in the statutory scheme, Robins' previous classification as a sexually orientated offender is reinstated").

{¶13} Notably, *Bodyke* in severing R.C. 2950.031 and 2950.032 did not dismiss the cases but held "R.C. 2950.031 and 2950.032 may not be applied to offenders previously adjudicated by judges under Megan's Law, and the classifications and

community-notification and registration orders imposed previously by judges are reinstated." Id. at ¶66. See also *State v. Gingell*, ___ N.E.2d ___, 2011-Ohio-1481. Similarly here, appellant's prior classification properly is reinstated.

{¶14} Accordingly, we sustain appellant's single assignment of error, reverse the judgment of the Franklin County Court of Common Pleas, and remand this case with instructions to vacate appellant's Tier III sex offender classification under Am.Sub.S.B. No. 10 and to reinstate his prior classification as a sexually oriented offender as determined in the Logan County Court of Common Pleas, along with any associated registration requirements.

*Judgment reversed and cause
remanded with instructions.*

SADLER and TYACK, JJ., concur.
