

[Cite as *In re D.D.*, 2009-Ohio-2501.]

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

D. D.

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Julie A. Edwards, J.

Hon. Patricia A. Delaney, J.

Case No. 2008 CA 00167

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of  
Common Pleas, Juvenile Division, Case  
No. 2007 JCR 2925

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

May 26, 2009

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

ALLYSON J. BLAKE  
122 Central Plaza N.  
Suite 101  
Canton, Ohio 44702

JOHN D. FERRERO  
Prosecuting Attorney  
Stark County, Ohio

By: RENEE M. WATSON  
Assistant Prosecuting Attorney  
Appellate Section  
110 Central Plaza, South – Suite 510  
Canton, Ohio 44702-0049

*Hoffman, P.J.*

{¶1} Appellant D.D. appeals the March 4, 2008 Judgment Entry entered by the Stark County Court of Common Pleas, Juvenile Division, which classified him as a Tier III juvenile sex offender. Appellee is the State of Ohio.

#### STATEMENT OF THE CASE AND FACTS

{¶2} On September 14, 2007, Appellant was charged with delinquency by reason of committing two counts of rape, felonies of the first degree if committed by an adult. Appellant appeared before the trial court for arraignment and entered a plea of not true. The trial court released Appellant to his mother and placed him on parental house arrest. At a pretrial hearing on January 23, 2008, the State merged the two counts of rape into one count. Appellant then withdrew his former plea of not true and entered a plea of true to one count of rape. The trial court ordered Appellant to undergo a sex offender risk assessment. The trial court conducted a dispositional hearing on March 4, 2008. The trial court ordered Appellant be committed to the Department of Youth Services for a minimum of one year to a maximum of age twenty-one. The trial court designated Appellant a Tier III juvenile sex offender, but did not require community notification. This matter is now before this Court on delayed appeal.

{¶3} Appellant raises the following as his sole assignment of error:

{¶4} "I. THE TRIAL COURT ERRED AND/OR ABUSED ITS DISCRETION IN CLASSIFYING APPELLANT-JUVENILE AS A TIER III SEX OFFENDER WITHOUT NOTICE OR MEANINGFUL HEARING AND WITHOUT CONSIDERING ALL OF THE NECESSARY FACTORS."

I

{¶15} In his sole assignment of error, Appellant maintains the trial court erred and/or abused its discretion in classifying him as a Tier III juvenile sex offender as such classification was done without notice or meaningful hearing, and without consideration of all the necessary factors.

{¶16} R.C. 2152.83(B)(1), which is applicable to the instant action, provides:

{¶17} “(B)(1) The court that adjudicates a child a delinquent child, on the judge's own motion, may conduct at the time of disposition of the child or, if the court commits the child for the delinquent act to the custody of a secure facility, may conduct at the time of the child's release from the secure facility a hearing for the purposes described in division (B)(2) of this section if all of the following apply:

{¶18} “(a) The act for which the child is adjudicated a delinquent child is a sexually oriented offense or a child-victim oriented offense that the child committed on or after January 1, 2002.

{¶19} “(b) The child was fourteen or fifteen years of age at the time of committing the offense.”

{¶10} At the dispositional hearing, the trial court and the prosecutor had the following exchange:

{¶11} “The Court: He was charged with (2) rapes but am I reading this correctly, he was adjudicated on one (1) count of rape?”

{¶12} “Atty Kaminski: Yes, Your Honor.

{¶13} “The Court: However, rape is an F1 and it is a tier three (3).

{¶14} “Atty Kaminski: Yes, Your Honor.

{¶15} “The Court: It would be tier three (3).

{¶16} “Atty Kaminski: Yes.

{¶17} “The Court: And the new mandatory ... and ah ... the Court has no discretion other than to, in terms of assignment of, it’s by charge and so, that he’s adjudicated of an F1, the Court’s required to assign it as a, as a tier three (3), which calls for what you said. Assuming the charges were appropriate. \* \* \*

{¶18} “Atty Kaminski: Your Honor, the registration, he is discretionary given his age, he’s in the fourteen (14), fifteen (15) (inaudible).

{¶19} “The Court: Okay, how about his age. What is his date of birth?

{¶20} “\* \* \*

{¶21} “Atty Kaminski: He was fifteen at the time of the offense.

{¶22} “The Court: Fifteen, yeah.

{¶23} “Atty Kaminski: So, it would be in the discretionary whether or not, he should be registered. \* \* \*

{¶24} March 4, 2008 Tr. at 5-6.

{¶25} Thereafter, the trial court proceeded with the dispositional hearing. After statements from a probation officer, Appellant, counsel for Appellant, and Appellant’s grandfather, the trial court remarked:

{¶26} “The Court: Okay. Well, \* \* \* you’ve got a problem with um...the new law, from the stand point of registration and that, really as I indicated, really is based upon ah...the level of offense. And so, really (inaudible) has done, the effect of what that has done, is to um...remove the Court’s discretion. From um...from that decision. And...so,

the first thing I'm going to say is, that you will be registered as a ah...tier three (3), which um...requires a number of things, including life time registration, so on and so forth and we'll give you all the details of that. \* \* \*

{¶27} March 8, 2008 Tr. at 14. (Emphasis added.)

{¶28} The record clearly reflects the trial court found the classification level to be Tier III as a matter of law.<sup>1</sup> And, while the prosecutor advised and the trial court appears to have understood<sup>2</sup>, the decision to classify Appellant a juvenile offender registrant was discretionary under R.C. 2152.83(B)(1), out of an abundance of caution, we reverse the trial court's decision and remand the matter to the trial court for redetermination of whether to classify Appellant a juvenile offender registrant.

{¶29} Appellant's sole assignment of error is sustained.

By: Hoffman, P.J.

Edwards, J. and

Delaney, J. concur

s/ William B. Hoffman  
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HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards  
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HON. JULIE A. EDWARDS

s/ Patricia A. Delaney  
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HON. PATRICIA A. DELANEY

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<sup>1</sup> See R.C. 2950.01(G)(3).

<sup>2</sup> The trial court's above quoted statement was made after the prosecutor's request to order registration and after evidence of Appellant's risk assessment was presented.

