

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

WILLIAM J. DUBE

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Craig R. Baldwin, J.

Case No. 2024 CA 00012

O P I N I O N

CHARACTER OF PROCEEDINGS:

Appeal from the Licking County Court of
Common Pleas, Case No. 2023 CR 00521

JUDGMENT:

Vacated and Remanded

DATE OF JUDGMENT ENTRY:

September 25, 2024

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, P.J.

{¶1} Defendant-appellant William J. Dube appeals the January 9, 2024 Judgment Entry entered by the Licking County Court of Common Pleas, memorializing his convictions and sentence on four (4) counts of gross sexual imposition, and classifying him as a Tier III sex offender, after he entered a plea of no contest to the charges and the trial court found him guilty. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE¹

{¶2} On August 3, 2023, the Licking County Grand Jury indicted Appellant on one (1) count of rape, in violation of R.C. 2907.02(A)(1)(b), a felony of the first degree; and four (4) counts of gross sexual imposition, in violation of R.C. 2907.05(A)(4), felonies of third degree. The Indictment also included a sexually violent predator specification pursuant to R.C. 2941.148(A)(1)(A). Appellant appeared before the trial court for arraignment on August 8, 2023, and entered a plea of not guilty to the charges.

{¶3} On January 9, 2024, the scheduled trial date, Appellant appeared with counsel and advised the court he wished to enter a plea of no contest to the four (4) counts of gross sexual imposition. In exchange, the State asked the trial court to dismiss the one (1) count of rape and the sexually violent predator specification. The trial court conducted a Crim.R. 11 colloquy with Appellant. After accepting Appellant's plea and finding him guilty, the trial court sentenced Appellant to an aggregate term of imprisonment of ten (10) years. The trial court also classified Appellant as a Tier III sex

¹ A Statement of the Facts underlying Appellant's convictions is not necessary to our disposition of this appeal.

offender pursuant to R.C. 2950.01. The trial court memorialized Appellant's convictions and sentence via Judgment Entry filed January 9, 2024.

{¶4} It is from this judgment entry Appellant appeals, raising the following assignments of error:

I. THE PORTION OF THE TRIAL COURT'S SENTENCE OF APPELLANT ORDERING APPELLANT TO REGISTER AS A SEX OFFENDER UNDER TIER III REGISTRATION REQUIREMENTS WAS CONTRARY TO LAW BECAUSE APPELLANT'S CONVICTIONS DID NOT REQUIRE TIER III SEX OFFENDER REGISTRATION, IN VIOLATION OF R.C. 2950.01, APPELLANT'S RIGHT TO DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION, AND APPELLANT'S RIGHT AGAINST EX POST FACTO LAWS UNDER ARTICLE I, SECTION 10 OF THE UNITED STATES CONSTITUTION AND ARTICLE II, SECTION 28 OF THE OHIO CONSTITUTION.

II. THE FAILURE OF APPELLANT'S TRIAL COUNSEL TO OBJECT TO THE TRIAL COURT'S REQUIREMENT THAT APPELLANT REGISTER AS A SEX OFFENDER UNDER TIER III REGISTRATION REQUIREMENTS CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL, IN VIOLATION OF APPELLANT'S RIGHT TO COUNSEL UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE

UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE
OHIO CONSTITUTION.

II

{¶5} In his second assignment of error, Appellant raises a claim of ineffective assistance of counsel. Specifically, Appellant contends counsel was ineffective for failing to object to the trial court's classification of Appellant as a Tier III sexual offender.

{¶6} In its brief to this Court, the State concedes this error. The State bases its concession on the Fourth District Court of Appeals' recent decision in *State v. Rossiter*, 2023-Ohio-4809, ¶¶ 32-34 (4th Dist.). The *Rossiter* Court addressed an analogous argument, as follows:

Appellant next argues that trial counsel failed to advocate for the correct sex-offender classification. Appellant asserts that: (1) trial counsel performed deficiently by failing to direct the trial court to the correct sex-offender-classification level, Tier II, and (2) counsel's deficient performance prejudiced him in that it caused the trial court to impose an incorrect sex-offender classification. Here, the state concedes the error.

We agree with the parties. R.C. 2950.01(F)(1)(c) states that a "Tier II sex offender/child-victim offender" includes a sex offender who has been convicted of violating R.C. 2907.05(A)(4). R.C. 2950.01(G)(1)(b) provides that a "Tier III sex offender/child-victim offender" includes a sex offender who has been convicted of violating R.C. 2907.05(B).³ Appellant was

convicted of violating R.C. 2907.05(A)(4), not R.C. 2907.05(B). Therefore, appellant's trial counsel (and the prosecution and trial court) should have proposed that the trial court classify appellant a Tier II, not a Tier III, sex offender. Trial counsel's failure to do so constituted deficient performance and this affected the outcome of the proceeding.

Consequently, we agree with appellant that trial counsel performed ineffectively for the failure to ask the court to impose a Tier II sex-offender classification. To this limited extent, we sustain appellant's first assignment of error, vacate the trial court's Tier III classification, and remand the matter so that the trial court may hold a new sex-offender classification hearing and notify appellant of the Tier II requirements.

Id. at ¶¶32-34

{¶7} In light of the State's concession, we sustain Appellant's second assignment of error, vacate the trial court's classification of Appellant as a Tier III sexual offender, and remand the matter to the trial court for a new sexual offender classification hearing.

I

{¶8} In light of our disposition of Appellant's second assignment of error, we find any discussion of Appellant's first assignment of error to be moot.

{¶9} The judgment of the Licking County Court of Common Pleas is vacated and the matter remanded for further proceedings consistent with this Opinion and the law.

By: Hoffman, P.J.

Wise, J. and

Baldwin, J. concur

