

[Cite as *Dallacheisa v. State*, 2010-Ohio-3176.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92180

ALLEN DALLACHEISA

PLAINTIFF-APPELLEE

vs.

STATE OF OHIO

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-645979

BEFORE: Kilbane, J., Cooney, P.J., and Gallagher, A.J.

RELEASED: July 8, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also,

S.Ct. Prac.R. 2.2(A)(1).

MARY EILEEN KILBANE, J.:

{¶ 1} Sua sponte, this court lifts the stay that was previously issued in Appeal No. 92180.

{¶ 2} The State appeals the decision of the trial court that denied its request for an evidentiary hearing and held that appellee, Allen Dallacheisa (“Dallacheisa”), was not subject to the community notification provisions of the Adam Walsh Act (“AWA”). In light of the Ohio Supreme Court’s recently decided, *State v. Bodyke*, Slip Op. No. 2010-Ohio-2424, we affirm.

{¶ 3} The following facts give rise to this appeal.

{¶ 4} On March 25, 1994, Dallacheisa was convicted of five counts of sexual battery, in violation of R.C. 2907.03(A)(1), all felonies of the third degree.¹ Dallacheisa was sentenced to two years of imprisonment on each count, to be served consecutively, for an aggregate sentence of ten years of imprisonment. On April 7, 1998, the trial court granted Dallacheisa’s motion for judicial release and found Dallacheisa to be a sexually oriented offender, the least restrictive classification, requiring him to register annually with the

¹Dallacheisa was charged in Tuscarawas County, Ohio, Case No. 93 CR 040084. All matters relating to conviction and sentencing took place in Tuscarawas County.

sheriff's office for ten years. Dallacheisa subsequently moved to Lakewood, Ohio where he registered as a sex offender.

{¶ 5} On November 26, 2007, the Ohio Attorney General's office sent Dallacheisa a letter advising him that, beginning January 1, 2008, he would be reclassified as a Tier III sex offender, the most restrictive classification, which required him to register with the sheriff's office every 90 days for life, pursuant to the AWA. On January 2, 2008, Dallacheisa filed a petition to contest the application of the AWA, arguing that the act was unconstitutional and could not retroactively impose additional registration requirements.

{¶ 6} On September 5, 2008, the trial court held a hearing on Dallacheisa's petition to contest the AWA. The trial court found the AWA to be constitutional. The trial court then had to determine whether Dallacheisa was subject to the community notification provisions.

{¶ 7} The State argued that the trial court was required to hold an evidentiary hearing. Dallacheisa argued that because he was not subject to community notification provisions under the previous statutory scheme, he was not subject to the community notification provisions enumerated in the AWA. The trial court agreed with Dallacheisa and determined that he was not subject to the community notification requirements.

{¶ 8} The State timely appealed asserting the following sole assignment of error for our review.

“THE TRIAL COURT ERRED IN FINDING COMMUNITY NOTIFICATION, PURSUANT TO R.C. 2950.11(F)(2), DOES NOT APPLY TO APPELLEE.”

{¶ 9} The State argues that the trial court erred when it relieved Dallacheisa of his community notification requirements without first conducting an evidentiary hearing. Based on the Supreme Court’s recent decision in *Bodyke*, supra, we determine that the AWA cannot be retroactively applied to reclassify offenders and impose additional reporting requirements.

{¶ 10} Specifically, *Bodyke* held, “R.C. 2950.031 and R.C. 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.” Therefore, the State cannot impose community notification on Dallacheisa pursuant to the AWA.

{¶ 11} The State’s sole assignment of error is overruled, and Dallacheisa’s original classification as a sexually oriented offender is reinstated.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, JUDGE

COLLEEN CONWAY COONEY, P.J., and
SEAN C. GALLAGHER, A.J., CONCUR