

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

BRANDON M. MOORE,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 19 MA 0127

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2002 CR 525

BEFORE:

Gene Donofrio, Cheryl L. Waite, Carol Ann Robb, Judges.

JUDGMENT:

Reversed and Modified

Atty. Paul J. Gains, Prosecutor and *Atty. Ralph Rivera*, Assistant Prosecutor, Mahoning County Prosecutor's Office, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503, for Plaintiff-Appellee and

Atty. Rachel Bloomekatz, 1148 Neil Avenue, Columbus, Ohio 43201, for Defendant-Appellant.

Dated:
September 23, 2020

Donofrio, J.

{¶1} Defendant-appellant, Brandon Moore, appeals from a Mahoning County Common Pleas Court judgment requiring him to report annually for a period of 15 years after the trial court classified him as a sexually oriented offender.

{¶2} Appellant was convicted by a jury of three counts of aggravated robbery, three counts of rape, three counts of complicity to rape, kidnapping, aggravated menacing, and multiple firearm specifications. Appellant committed these crimes when he was 15 years old. He is currently serving a 50-year sentence.

{¶3} Relevant to the instant appeal, on March 30, 2012, appellant filed a motion for resentencing, arguing that the trial court erred in designating him a Tier III sex offender. This court agreed. *State v. Moore*, 7th Dist. Mahoning No. 12 MA 91, 2013-Ohio-1431. We held that the trial court erred in reclassifying appellant under S.B. 10 (the Adam Walsh Act) because he committed his offenses prior to its enactment. *Id.* at ¶ 32. We noted that because of the length of appellant's sentence, the state never asked the trial court to classify him with a particular sex offender status under Megan's Law (the statutory scheme for classifying sex offenders in place at the time appellant committed the offenses in this case) when he was originally sentenced in 2002. *Id.* at ¶ 37. Because appellant never had a sex offender classification hearing, we remanded the case to the trial court for the limited purpose of holding a sex offender classification hearing and to classify appellant pursuant to Megan's Law. *Id.* at ¶ 38.

{¶4} Due to appellant's numerous appeals and his later resentencing hearing, the trial court did not hold the sexual offender classification hearing until October 21, 2019. At the conclusion of the hearing, the trial court classified appellant as a sexually oriented offender, which is the lowest classification under Megan's Law. The court went on to instruct appellant that per this classification, he was required to report in person each year for a period of 15 years following his release from prison. The court then filled out its pre-printed judgment entry for notice of duties to register as a sex offender. On the pre-printed judgment entry, the court checked the box stating: "**Sexually Oriented Offender**

– the offender is required to fulfill these requirements in person **once each year** for a period of **15 years.**” (Oct. 21, 2019 Judgment Entry).

{¶5} Appellant filed a timely notice of appeal on November 12, 2019.

{¶6} This appeal is unique because instead of appellant filing an appellate brief and plaintiff-appellee, the State of Ohio, filing a responsive brief, the parties together filed what they call a “supplemental joint brief to amend annual reporting requirement in sex offender classification order.” This court has construed this filing as a joint appellant’s and appellee’s brief.

{¶7} Appellant committed the offenses in this case in 2001. At that time, Ohio’s version of the federal Megan’s Law was the sex offender registration scheme in place. In 2007, Ohio enacted its version of the federal Adam Walsh Act, which changed the sex offender registration scheme.

{¶8} Under Megan’s Law, offenders were entitled to a hearing at which the court would determine whether they should be classified as a sexual predator, a habitual sex offender, or a sexually oriented offender. *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, ¶ 17. The trial court in this case classified appellant as a sexually oriented offender. Pursuant to Megan’s Law, because appellant was classified as a sexually oriented offender he would be required to register with the sheriff as a sex offender annually for a period of ten years. Former R.C. 2950.07.

{¶9} Under the Adam Walsh Act, the former categories of sexually oriented offender, habitual sex offender, and sexual predator do not exist and the trial court does not hold classification hearings as before. *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶ 21. Instead, an offender is now simply classified as a Tier I, Tier II, or Tier III sex offender (or child-victim offender) based solely on the offender’s offense. *Id.*, citing R.C. 2950.01. A Tier I sex offender, the lowest level under the Adam Walsh Act, is required to register with the sheriff and verify his current address annually for a period of 15 years. R.C. 2950.07(B)(3).

{¶10} In this case, the parties agree that Megan’s Law, and not the Adam Walsh Act, applies to appellant’s sexual offender classification. This court already determined in *Moore*, *supra*, that Megan’s Law applies to appellant. This was the basis of the remand and sexual offender classification hearing. *Moore*, at ¶ 38.

{¶11} The parties also agree in their joint brief that there is no need for this court to remand this matter yet again. Instead, they request that we simply correct the reporting requirement to ten years.

{¶12} The parties' statements to this court are accurate. As per our previous decision in *Moore*, supra, Megan's Law, which was in effect when appellant committed the offenses in this case, controls. "Megan's Law still applies to defendants who committed their offenses before the enactment date of the Adam Walsh Act." *State v. Ingledue*, 7th Dist. Columbiana No. 13 CO 51, 2014-Ohio-4003, ¶ 30, citing *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, ¶ 23.

{¶13} Under Megan's Law, the statutory annual reporting period for a sexually oriented offender is ten years, not 15 years. *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶ 24, citing former R.C. 2950.07(B)(3) and 2950.06(B)(2). Thus, the parties to this appeal are correct. The trial court should have set appellant's annual reporting requirement at ten years.

{¶14} For the reasons stated above, the trial court's judgment is hereby reversed and modified to reflect the correct ten-year reporting period based on appellant's classification as a sexually oriented offender under Megan's Law.

Waite, P. J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is sustained and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is reversed and modified to reflect the correct ten-year reporting period based on appellant's classification a sexually oriented offender under Megan's Law. Costs to be waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.