[Cite as *State v. Hopson*, 2021-Ohio-1166.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

PEYTON HOPSON,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 20 MA 0100

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 1990 CR 727

BEFORE:
David A. D'Apolito, Gene Donofrio, Cheryl L. Waite, Judges.

JUDGMENT:
Affirmed.

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

Peyton Hopson, *Pro Se,* # A66-444, Belmont Correctional Institution, P.O. Box 540, St. Clairsville, Ohio 43950, Defendant-Appellant.

Dated: March 25, 2021

D'Apolito, J.

{¶1} Appellant Peyton Hopson, acting pro se, appeals the judgment entry of the Mahoning County Court of Common Pleas overruling his pro se motion for summary judgment, filed pursuant to R.C. 2953.21(D) and/or Civ. R. 56(A), to terminate his sex offender registry obligation. For the following reasons, the judgment of the trial court is affirmed.

{¶2} A single page of the docket report from this case and a copy of a completed "Explanation of Duties to Register as a Sex Offender" form are attached to the trial court pleadings. According to the docket report, on February 19, 1991, Appellant was convicted of attempted rape, in violation of R.C. 2907.02(A)(2) and R.C. 2923.02(A)(E), and kidnapping, in violation of 2905.01(A)(4). On February 20, 1991, the trial court imposed a prison sentence of seven to fifteen years.

{¶3} Appellant executed the sex offender form on November 17, 2003, and is classified on the form as a "sexually oriented offender." With respect to that classification, the form reads, "You are required to fulfill [certain specific residential registration obligations] for a period of ten years with annual residence verification."

{¶4} In the absence of any tolling, Appellant's duty to register would have terminated on November 17, 2013. However, the registration requirement is tolled during any period of incarceration pursuant to R.C. 2950.07(D).

{¶5} The Stark County Clerk of Courts online docket establishes that Appellant was convicted of an amended charge of falsification, originally charged as a failure to register notice of change of address, in violation of R.C. 2950.99(A), on December 13, 2013. His sentence was suspended on the condition that he fulfill all of his reporting requirements. Appellant is currently serving a fourteen-year sentence, which commenced on November 18, 2014, following Appellant's conviction for felonious assault, with a violent repeat offender specification. Therefore, Appellant's duty to register does not appear to have terminated of its own accord.

{¶6} In the motion, Appellant seeks termination of the "unconstitutional sex offender registration obligation," citing *In re Von*, 146 Ohio St.3d 448, 2016-Ohio-3020,

57 N.E.3d 1158 (2016). However, Appellant's motion is predicated more specifically upon R.C. 2950.15, which provides:

> (A) As used in this section * * *, "eligible offender" means a person who is convicted of, pleads guilty to, was convicted of, or pleaded guilty to a sexually oriented offense or child-victim oriented offense, regardless of when the offense was committed, and is a tier I sex offender/child-victim offender * * *.
>
> (B) Pursuant to this section, an eligible offender may make a motion to the court of common pleas * * * requesting that the court terminate the eligible offender's duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code.

{¶7} A brief history of Ohio's sex offender registration law informs our decision. In 1996, the General Assembly enacted Am.Sub.H.B. 180 ("Megan's Law") which amended the state's sex offender registration process. *State v. Cook*, 83 Ohio St.3d 404, 406, 1998-Ohio-291. Portions of Megan's Law became effective January 1, 1997, and other portions of the law became effective July 1, 1997. *Id.* Although Appellant was sentenced prior to the effective date of Megan's Law, the sexually oriented offender classification attached as a matter of law. *State v. Hayden*, 96 Ohio St.3d 211, 2002-Ohio-4169, paragraph two of the syllabus.

{¶8} In 2007, the General Assembly enacted Am.Sub.S.B. 10, which repealed Megan's Law and replaced it with Ohio's version of the Adam Walsh Act ("S.B. 10" or "Adam Walsh Act"). *State v. Bodyke*, 126 Ohio St.3d 266, 2010–Ohio–2424, ¶ 20. S.B. 10 eliminated the categories of sexually oriented offender, habitual sex offender, and sexual predator under Megan's Law and replaced them with a three-tier classification system. *Id.* at ¶ 21. The law directed the attorney general to reclassify existing offenders within one of the three tiers; these assignments were made solely based on the offense. *Id.* at ¶ 22.

{¶9} However, in *Bodyke, supra,* the Ohio Supreme Court struck down the reclassification provisions, finding that those sections impermissibly instructed the

executive branch to review past decisions of the judicial branch, and, as a consequence, violated the separation-of-powers doctrine. Further, in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, the Supreme Court of Ohio held that "S.B. 10, as applied to defendants who committed sex offenses prior to its enactment, violates Section 28, Article II of the Ohio Constitution, which prohibits the General Assembly from passing retroactive laws." *Id.* at ¶ 22.

{¶10} In *In re Von, supra,* the Supreme Court held that sex offenders who committed their offenses prior to January 1, 2008, the effective date of the Adam Walsh Act, cannot be constitutionally classified pursuant to it, and, therefore, cannot be "eligible offenders" under the Act entitled to request termination of their duties to comply with registration requirements. The Ohio Supreme Court opined:

> While R.C. 2950.15(A) explicitly states that a person qualifies as an eligible offender "regardless of when the offense was committed," that statement is ineffective by itself to qualify an individual as an eligible offender unless that offender is also a Tier I sex offender, because the statute uses the conjunction "and," which imposes a dual requirement to effect its application.
>
> The record contains no evidence that Von has been classified as a Tier I sex offender or child-victim offender. To the contrary, the documentation attached to his motion for a preliminary injunction demonstrates that he has been previously classified as a Megan's Law offender, not an Adam Walsh Act offender. And therefore, he is not a Tier I sex offender.
>
> As established by this court in *Williams* and *In re Bruce S.*, the tier classification system of the Adam Walsh Act cannot be constitutionally applied to Von or other sex offenders who committed offenses prior to its effective date, regardless of when they are convicted or sentenced.
>
> The claim that the remedy of severance would permit Megan's Law offenders to be reclassified as Adam Walsh Act Tier I offenders for the purpose of having their Megan's Law duties terminated is inconsistent with

> *Williams*, *In re Bruce S.*, and the plain language of 2950.15(B), which permits eligible offenders to request termination of their "duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code." Notably, the legislature made no reference to Megan's Law, which is indicative of its intent that those offenders are not eligible for termination of those registration duties.
>
> Accordingly, Von and other sex offenders who committed their offenses prior to January 1, 2008, the effective date of the Adam Walsh Act, cannot be constitutionally classified pursuant to it and therefore cannot be "eligible offenders" as defined by R.C. 2950.15(A).

Id. at ¶ 19-23.

{¶11} Like the record in *Von*, the record in this appeal contains no evidence that Appellant has been classified as a Tier I sex offender or child-victim offender. To the contrary, the documentation attached to his motion demonstrates that he had been previously classified as a Megan's Law offender, not an Adam Walsh Act offender. Therefore, like Von, Appellant is not a Tier I sex offender, and, as a result, he is not an "eligible offender" authorized to seek termination of his sex offender registry requirement pursuant to R.C. 2950.15. Accordingly, the judgment of the trial court is affirmed.

Donofrio, P.J., concurs.

Waite, J., concurs.

For the reasons stated in the Opinion rendered herein, it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

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.