

[Cite as *Edwards v. State*, 2011-Ohio-1492.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

David L. Edwards,	:	
	:	
Petitioner-Appellant,	:	
	:	No. 10AP-645
v.	:	(C.P.C. No. 08MS01-171)
	:	
State of Ohio,	:	(REGULAR CALENDAR)
	:	
Respondent-Appellee.	:	

D E C I S I O N

Rendered on March 29, 2011

Yeura R. Venters, Public Defender, and *John W. Keeling*, for appellant.

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Petitioner-appellant, David L. Edwards, appeals from a judgment of the Franklin County Court of Common Pleas dismissing his petition to contest reclassification pursuant to R.C. 2950.031 and 2950.032. For the following reasons, we reverse that judgment and remand the matter to the trial court with instructions.

Facts and Procedural History

{¶2} In 2000, appellant was convicted of one count of gross sexual imposition in the Cuyahoga County Court of Common Pleas. After a hearing, the court designated appellant a sexually oriented offender under then existing R.C. Chapter 2950.

{¶3} At some point, appellant was notified of his reclassification as a Tier II Sex Offender under the newly-enacted Adam Walsh Act. Appellant challenged this reclassification by filing a petition in the trial court¹ to contest the reclassification pursuant to R.C. 2950.031 and 2950.032. Appellant asserted a number of constitutional arguments against the application of the Adam Walsh Act to his case. The trial court stayed appellant's petition.

{¶4} Subsequently, in June 2010, the Supreme Court of Ohio decided *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424. In *Bodyke*, the court held that the reclassification provisions of R.C. 2950.031 and 2950.032 were unconstitutional. *Id.* at paragraphs two and three of the syllabus. The court severed those portions of the Adam Walsh Act, but still provided relief to the petitioners, concluding that "the classifications and community-notification and registration orders imposed previously by judges are reinstated." *Id.* at ¶66.

{¶5} In light of the *Bodyke* ruling, the trial court in appellant's case sua sponte dismissed his petition as moot. The trial court took such action because it concluded that the *Bodyke* decision provided appellant with the relief he sought.

{¶6} Appellant appeals and assigns the following error:

¹ Appellant now resides in Franklin County and, therefore, filed his petition in the common pleas court of that county.

THE TRIAL COURT ERRED WHEN IT DISMISSED THE APPELLANT'S PETITION ON THE GROUNDS THAT A FAVORABLE SUPREME COURT RULING IN ANOTHER CASE, IN WHICH THE APPELLANT WAS NOT A PARTY, RENDERED THE PETITION MOOT. THE SUPREME COURT RULING RENDERED THE APPELLANT'S PETITION MERITORIOUS, NOT MOOT, AND RELIEF SHOULD HAVE BEEN GRANTED ACCORDINGLY. THE TRIAL COURT FURTHERED [SIC] ERRED WHEN IT DISMISSED THE PETITION, SUA SPONTE, WITHOUT GIVING ANY PARTIES AN OPPORTUNITY TO BE HEARD ON THE ISSUE.

Assignment of Error - *Bodyke* Relief

{¶7} Appellant contends that the *Bodyke* decision renders his petition meritorious, not moot, and that the trial court accordingly erred by dismissing his petition. The state argues that appellant cannot obtain relief under R.C. 2950.031 and 2950.032 because the Supreme Court in *Bodyke* severed those sections, including the petition procedures found in them. See also *Chojnacki v. Cordray*, 126 Ohio St. 3d 321, 2010-Ohio-3212.

{¶8} This court recently considered the same arguments and concluded that "petitioners who filed their petitions prior to *Bodyke* being decided are entitled to the relief the Ohio Supreme Court granted to *Bodyke*." *Cook v. Ohio*, 10th Dist. No. 10AP-641, 2011-Ohio-906, ¶9. See also *State v. Miliner*, 10th Dist. No. 09AP-643, 2010-Ohio-6771, ¶¶13-15; *State v. Hazlett*, 10th Dist. No. 09AP-1069, 2010-Ohio-6119, ¶12. Appellant filed his petition before the *Bodyke* decision and is, therefore, entitled to the relief granted in *Bodyke*. The trial court erred when it denied appellant such relief.

{¶9} Appellant's assignment of error is sustained. Accordingly, we reverse the judgment of the trial court and remand the matter with instructions to vacate appellant's

Tier II reclassification and reinstate appellant's previous classification as a sexually oriented offender.

*Judgment reversed and cause remanded
with instructions.*

TYACK and CONNOR, JJ., concur.
