

[Cite as *Hosom v. State*, 2011-Ohio-1494.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Roy E. Hosom, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 10AP-671
 : (C.P.C. No. 08MS-01-0152)
 State of Ohio, : (REGULAR CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on March 29, 2011

Ron O'Brien, Prosecuting Attorney, and *Kimberly Bond*, for
appellant.

Yeura R. Venters, Public Defender, and *Allen V. Adair*, for
appellee.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Appellant, state of Ohio, filed this appeal seeking reversal of a judgment by the Franklin County Court of Common Pleas granting the petition of appellee, Roy E. Hosom, challenging his reclassification as a Tier III sex offender. For the reasons that follow, we affirm in part and reverse in part.

{¶2} In 1998, appellee entered a plea of guilty and was convicted in the Morgan County Court of Common Pleas on one count of rape. Appellee was sentenced to a term of nine years of incarceration and was designated a sexually oriented offender. Pursuant to the provisions of Ohio's version of the Adam Walsh Act ("AWA"), appellee received a notification from the Ohio Attorney General informing him that he had been reclassified as a Tier III sex offender.

{¶3} Appellee filed a pro se petition challenging this classification, along with a motion seeking to stay enforcement of the community notification provisions applicable to him under the AWA. The state filed a memorandum opposing the petition and motion to stay. The trial court appointed counsel for appellee, who filed a second petition, which included a request for relief from the AWA notification requirements.¹

{¶4} The trial court granted the stay of the notification requirements, and subsequently stayed the case pending the outcome of litigation pending in various cases. On July 6, 2010, the trial court, without holding a hearing, lifted the stay and granted appellee's petition. The court relied on the decision by the Supreme Court of Ohio in *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, in which the court found that the reclassification provisions of the AWA were unconstitutional. In its entry, the trial court concluded that appellee's reporting requirements as a sexually oriented offender had been completed, and directed that appellee's name be removed from any

¹ We note that the case was incorrectly filed identifying the state as the plaintiff and appellee as the defendant. Since appellee filed this action, which is civil rather than criminal in nature, the case should more properly show appellee as the plaintiff and the state as the defendant.

sex offender databases, including those operated by the Franklin County Sheriff and the Ohio Attorney General.

{¶5} The state filed this appeal, asserting four assignments of error:

FIRST ASSIGNMENT OF ERROR

The trial court erred in granting the petition when it was based in major part on R.C. 2950.031(E), which is part of a statute that has been severed in its entirety.

SECOND ASSIGNMENT OF ERROR

The trial court erred in failing to conduct the hearing required by R.C. 2950.031 before granting defendant's petition.

THIRD ASSIGNMENT OF ERROR

The trial court erred in determining that defendant's duty to register commenced on September 28, 1998, and that the "registration duty is completed."

FOURTH ASSIGNMENT OF ERROR

The trial court erred in ordering that defendant's "name and personal information shall be removed from all of Ohio's sex offender registries and databases, including the databases of the Franklin County Sheriff and the Ohio Attorney General."

{¶6} Resolution of the state's first assignment of error requires consideration of the decisions by the Supreme Court of Ohio in *Bodyke* and *Chojnacki v. Cordray*, 126 Ohio St.3d 321, 2010-Ohio-3212. In *Bodyke*, the court concluded that R.C. 2950.031 and 2950.032, which provided for reclassification of sex offenders by the Ohio Attorney General, were unconstitutional because they violated the separation of powers by allowing an executive branch official to change a judicially made designation regarding a defendant's sex offender status. *Bodyke* at ¶2. The court concluded that the

appropriate remedy was to sever R.C. 2950.031 and 2950.032, and return those defendants who had been reclassified by the Attorney General to their previous judicially designated status. *Id.*

{¶7} Shortly after *Bodyke* was decided, the court clarified the scope of the *Bodyke* remedy in *Chojnacki*. The issue in *Chojnacki* was whether the denial of appointed counsel to a party seeking to challenge a reclassification by filing a petition as set forth in R.C. 2950.031 and 2950.032 constituted a final appealable order. The court concluded that after the severance of R.C. 2950.031 and 2950.032 in *Bodyke*, any issues regarding the petition process for challenging a reclassification were moot. *Chojnacki* at ¶6.

{¶8} The state argues that after *Chojnacki's* clarification of the scope of the *Bodyke* remedy, the trial court in this case had no authority to rule on appellee's petition, and the petition should therefore have been dismissed. However, in our post-*Bodyke* and *Chojnacki* cases, we have drawn a distinction between the severance portion of the *Bodyke* remedy and that portion of the *Bodyke* remedy that ordered the sex offenders in that case to be returned to their previous judicially determined sex offender classifications. We have consistently recognized that, notwithstanding the severance of the statutory provisions under which the reclassification petitions were filed, petitioners such as appellee are entitled to orders directing their return to those previous classifications. *State v. Watkins*, 10th Dist. No. 09AP-669, 2010-Ohio-4187; *State v. Miliner*, 10th Dist. No. 09AP-643, 2010-Ohio-6117; *State v. Hazlett*, 10th Dist. No. 09AP-1069, 2010-Ohio-6119; *Core v. State*, 10th Dist. No. 09AP-192, 2010-Ohio-6292; *Cook v. State*, 10th Dist. No. 10AP-641, 2011-Ohio-906.

{¶9} Consistent with this precedent, the trial court did not err when it concluded that appellee was entitled to an order directing that he be returned to his previous sex offender classification. Accordingly, the state's first assignment of error is overruled.

{¶10} In its second assignment of error, the state argues that the trial court erred when it granted appellee's petition without first holding a hearing as required by R.C. 2950.031(E). That statutory section provides that a petitioner challenging a reclassification by the Attorney General is entitled to a hearing as a matter of right. Thus, under the statute, it is clear that a court could not deny a petition without holding a hearing; the state by its assignment of error is essentially arguing the inverse – that the court is also required to hold a hearing prior to the granting of a petition. Thus, although the state's assignment of error is worded, as is the statute, in terms of the petitioner's right to a hearing, the state is essentially arguing that the statute also provides the state with a right to a hearing.

{¶11} However, this is the type of issue found to be moot under *Bodyke* and *Chojnacki*. Because the petition process set forth in R.C. 2950.031 and 2950.032 was severed, any issues relating to that petition process, including whether the statute provides the state with the same right to a hearing as a petitioner, no longer constitute any justiciable controversy and are therefore moot.

{¶12} Consequently, the state's second assignment of error is overruled as moot.

{¶13} In its third and fourth assignments of error, the state takes issue with the trial court's order finding that appellee had completed his reporting requirements, and was therefore no longer required to register as a sexually oriented offender.

Specifically, the state argues that appellee's duty to register as a sexually oriented offender did not arise until his release from incarceration in 2007, and the ten-year reporting period would therefore run until 2017. Similarly, the state argues in its fourth assignment of error that the trial court's order directing the Franklin County Sheriff and the Ohio Attorney General to remove appellee's name from any sex offender databases operated by those officials was an error because it was premised on the idea that appellee had completed his reporting requirements.

{¶14} Appellee has conceded these two errors, agreeing that appellee's required reporting period as a sex offender did not begin until he was released from incarceration. Consequently, the state's third and fourth assignments of error are sustained, and this case must be remanded for the trial court to issue an order reinstating appellee's reporting requirements as a sexually oriented offender.

{¶15} Having overruled the state's first two assignments of error and sustained the state's third and fourth assignments of error, we hereby affirm in part and reverse in part the judgment of the Franklin County Court of Common Pleas, and remand this case for further proceedings consistent with this opinion.

*Judgment affirmed in part,
reversed in part;
cause remanded with instructions.*

BRYANT, P.J., and TYACK, J., concur.
