

[Cite as *Roy v. State*, 2009-Ohio-5808.]

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
BUTLER COUNTY

RYAN ALBERT ROY,	:	
Plaintiff-Appellant,	:	CASE NO. CA2009-02-067
- vs -	:	<u>OPINION</u> 11/2/2009
STATE OF OHIO,	:	
Defendant-Appellee.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS  
Case No. CV2008-04-1728

Robin N. Piper, III, Butler County Prosecuting Attorney, Gloria J. Sigman, Government Services Center, 315 High Street, 11th Floor, Hamilton, OH 45011-6057, for defendant-appellee

Clayton G. Napier, 29 North D Street, Hamilton, OH 45013, for plaintiff-appellant

**YOUNG, P.J.**

{¶1} Defendant-appellant, Ryan Albert Roy, appeals a decision of the Butler County Common Pleas Court dismissing his petition challenging his sex offender reclassification under Ohio's newly-enacted Adam Walsh Act.

{¶2} In 1997, appellant was convicted in the Butler County Common Pleas Court of several offenses, including attempted rape and complicity to rape, and was

adjudicated a sexually oriented offender. In March 2008, while incarcerated in the London Correctional Institution in Madison County, Ohio, appellant received written notice from the Ohio General Attorney informing him he had been reclassified from a sexually oriented offender to a Tier III sex offender with the corresponding lifetime registration requirement. In April 2008, appellant filed a petition in the Butler County Common Pleas Court (trial court) challenging his reclassification under R.C. 2950.031 and 2950.032. Appellant also moved the trial court for immediate relief from community notification under R.C. 2950.11(F)(2). The trial court initially stayed the proceedings pending guidance from a higher court on the newly-enacted Adam Walsh Act. The state moved to dismiss appellant's petition. Following the issuance of this court's decision in *State v. Williams*, Warren App. No. CA2008-02-029, 2008-Ohio-6195, the trial court summarily dismissed appellant's petition without a hearing.

{13} Appellant timely appeals, raising five assignments of error. On appeal, appellant challenges the application of the community notification provisions of R.C. 2950.11; asserts he is entitled to a hearing under R.C. 2950.11; argues his reclassification violates both the Double Jeopardy Clause of the Ohio and United States Constitutions and the doctrine of separation of powers; and argues the application of the Adam Walsh Act violates both the Ohio Constitution's prohibition on retroactive laws and the Ex Post Facto Clause of the United States Constitution. The state, in turn, first asserts that appellant's petition challenging his reclassification was not filed with the appropriate court under the Adam Walsh Act; therefore, the trial court lacked jurisdiction to entertain the petition and its dismissal was proper.<sup>1</sup>

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1. We note that the issue of the trial court's subject-matter jurisdiction over appellant's petition was never challenged or raised below. However, the issue of subject-matter jurisdiction is never waived

{¶14} R.C. 2950.032(E) provides in relevant part that "[a]n offender \*\*\* may request as a matter of right a court hearing to contest the application to the offender \*\*\* of the new registration requirements under [the Adam Walsh Act]. \*\*\* To request the hearing, an offender \*\*\* shall file a petition with the appropriate court not later than the date that is sixty days after the offender \*\*\* is provided the notice[.] *The request for the hearing shall be made in the manner and with the court specified in [R.C. 2950.031(E)].*" (Emphasis added.)

{¶15} R.C. 2950.031(E), in turn, states in pertinent part that to request a hearing to contest the application of the new registration requirements under the Adam Walsh Act, "the offender \*\*\* shall file a petition with the court specified in this division. If the offender \*\*\* resides or is temporarily domiciled in this state and request a hearing, *the offender \*\*\* shall file the petition with, and the hearing shall be held in, the court of common pleas \*\*\* of the county in which the offender \*\*\* resides or temporarily is domiciled.*" (Emphasis added.)

{¶16} The Adam Walsh Act requires offenders to file their petition in the court of common pleas of the county in which they reside or are temporarily domiciled, and not of the county in which they were sentenced and adjudicated to be sex offenders. Although "residence" and "domicile" are at times used synonymously, the two terms are not identical; a person may have more than one residence at a time but only one domicile. Residence "means bodily presence as an inhabitant in a given place," whereas domicile "requires bodily presence plus an intention to make the place one's home." Black's Law Dictionary (8th Ed.2004), 1335. Residence is "[t]he place where

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and may be challenged at any point during a case. See *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980; *Morgan v. Ramby*, Warren App. No. CA2007-12-147, 2008-Ohio-6194.

one actually lives, as distinguished from domicile." *Id.*

{¶7} Although decided on other grounds, the Third Appellate District stated in *State v. Helton*, Hardin App. No. 6-08-01, 2008-Ohio-1146, that "R.C. 2950.032(E) states that an offender served with notice \*\*\* may request a hearing to contest the new registration requirements. The offender must file a 'petition' within 60 days of receiving the notice and must comply with R.C. 2950.031(E). The offender's petition must be timely filed, and it must also be filed in the county where the offender is currently residing or temporarily domiciled. The record indicates that Helton is incarcerated outside of Hardin County. Therefore, Hardin County is an inappropriate forum for filing." *Id.* at ¶21. (Internal citations omitted.)

{¶8} In the case at bar, appellant was incarcerated in Madison County when he filed his petition challenging his reclassification under the Adam Walsh Act. He was thus required to file the petition in the Madison County Common Pleas Court. However, appellant filed the petition in the Butler County Common Pleas Court (the trial court) in violation of R.C. 2950.031(E) and 2950.032(E). Because appellant did not file his petition with the appropriate court under R.C. 2950.031(E), the trial court lacked jurisdiction to entertain the petition and its dismissal was proper.

{¶9} We therefore uphold the trial court's decision dismissing appellant's petition challenging his reclassification. We are mindful that the trial court dismissed the petition on the basis of *Williams*, 2008-Ohio-6195, and not for lack of subject-matter jurisdiction. However, an appellate court must affirm a trial court's judgment if upon review any valid grounds are found to support it. See *State v. Weisenberger*, Preble App. No. CA2001-08-014, 2002-Ohio-291. In light of the foregoing, we need not address appellant's five assignments of error.

{¶10} Judgment affirmed.

RINGLAND and HENDRICKSON, JJ., concur.