

[Cite as *Majewski v. State*, 2010-Ohio-3178.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 92372 and 92400

JERRY K. MAJEWSKI

PLAINTIFF-APPELLANT/
CROSS-APPELLEE

vs.

STATE OF OHIO

DEFENDANT-APPELLEE/
CROSS-APPELLANT

**JUDGMENT:
REVERSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-645826

BEFORE: Kilbane, J., Cooney, P.J., and Gallagher, A.J.

RELEASED: July 8, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

MARY EILEEN KILBANE, J.:

{¶ 1} Sua sponte, we lift the stay that was previously issued on App. Nos. 92372 and 92400.

{¶ 2} Appellant/cross-appellee, Jerry Majewski (“Majewski”), appeals the trial court’s judgment that denied his petition to contest the Adam Walsh Act (“AWA”), and held that the AWA could be retroactively applied to reclassify him from a sexually oriented offender to a Tier III offender. The trial court also concluded that because Majewski was not subject to community notification under the pre-AWA statutory scheme, he would not be subject to community notification under his present classification. The State separately appealed that finding, arguing that the trial court was required to hold a separate hearing on whether Majewski would be subject to community notification.

{¶ 3} As both appeals involve the same law and facts, we have consolidated them for disposition. In the recently decided, *State v. Bodyke*, Slip Opinion No. 2010-Ohio-2424, the Ohio Supreme Court concluded that the AWA violates the separation-of-powers doctrine, therefore, we reverse the judgment of the trial court. As the provisions of the AWA that reclassified Majewski are unconstitutional, we find the State’s appeal to be moot.

{¶ 4} On January 13, 1999, Majewski was convicted of sexual assault and attempted sexual assault in Hawaii, Case No. 1PC98-0-001875. Majewski was sentenced to one year in jail, five years of probation, and was classified as a sexually oriented offender, the least restrictive classification. Majewski subsequently moved to Cuyahoga County where he registered with the sheriff's office.

{¶ 5} On November 26, 2007, the Ohio Attorney General's office sent Majewski a letter informing him that, pursuant to the passage of S.B. 10, he has been reclassified as a Tier III sex offender, the most restrictive classification, which requires that he register with the sheriff's office every 90 days for life. On December 31, 2007, Majewski filed a petition to contest the application of the AWA, alleging that its provisions cannot be retroactively applied to him.

{¶ 6} On October 7, 2008, the trial court held a hearing on Majewski's challenges to the Adam Walsh Act. The trial court ultimately concluded the act to be constitutional. The State argued that the trial court was required to conduct an evidentiary hearing to determine if Majewski should be subject to community notification provisions. However, in light of the fact that both parties stipulated that Majewski was not subject to community notification under the prior statutory scheme, the trial court concluded that he would not be subject to community notification under the AWA. Majewski also argued

that he was misclassified as a Tier III offender under the AWA. The trial court concluded that the Hawaii statute under which Majewski was convicted was most analogous to Ohio's sexual battery statute, which would classify that Majewski was a Tier III offender.

{¶ 7} Majewski appealed, asserting seven assignments of error addressing the constitutionality of the AWA in App. No. 92372. The State also appealed the trial court's decision to exempt Majewski from community notification without holding a hearing in App. No. 92400. We will address Majewski's third assignment of error first, as it is dispositive.

{¶ 8} ASSIGNMENT OF ERROR NUMBER THREE

“THE RETROACTIVE APPLICATION OF SENATE BILL 10 VIOLATES THE SEPARATION OF POWERS DOCTRINE.”

{¶ 9} Majewski argues that the legislature's enactment of the AWA encroached on the power of the judiciary by reopening final judgments and reclassifying individuals who were already classified by trial courts. We agree.

{¶ 10} The separation of powers is one of the fundamental principles of our government. With respect to the separation of powers doctrine, the United States Supreme Court has stated, “[i]t is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers

confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other.”

Bodyke at ¶40, quoting *Kilbourn v. Thompson* (1880), 103 U.S. 168, 190-191, 26 L.Ed. 377.

{¶ 11} In *Bodyke*, the Ohio Supreme Court recently determined that the AWA violates the separation of power doctrine, stating the following:

“The AWA’s provisions governing the reclassification of sex offenders already classified by judges under Megan’s Law violates the separation-of-powers doctrine for two related reasons: the reclassification scheme vests the executive branch with authority to review judicial decisions, and it interferes with the judicial power by requiring the reopening of final judgments.” *Id.* at ¶55.

{¶ 12} Essentially, the AWA is a legislative mechanism to reopen the judgments on countless sex offender classifications, and reclassify those individuals, usurping the initial judgment of the trial court. Only appellate courts have the power to affirm, reverse, or modify a final judgment. *Bodyke* at ¶58; Section 3(B)(2), Article IV, Ohio Constitution.

{¶ 13} Therefore, Majewski’s third assignment of error is sustained. Majewski’s original classification is reinstated consistent with *Bodyke*. We

need not address Majewski's remaining assignments of error or the State's cross-appeal.

Judgment reversed.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, JUDGE

COLLEEN CONWAY COONEY, P.J., and
SEAN C. GALLAGHER, A.J., CONCUR