[Cite as *Parrish v. State*, 2010-Ohio-6415.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

SHAWN PARRISH Petitioner-Appellee -vs- STATE OF OHIO Respondent-Appellant	JUDGES: Hon. Willilam B. Hoffman, P.J. Hon. Sheila G. Farmer, J. Hon. John W. Wise, J. Case No. 10-CA-64 O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Licking County Common Pleas Court, Case No. 2008CV00117
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	December 28, 2010

APPEARANCES:

For Appellant	For Appellee
KENNETH W. OSWALT Licking County Prosecutor By: Alice L. Bond Assistant Prosecuting Attorney 20 S. Second St., 4th Floor Newark, Ohio 43055	SHAWN PARRISH, PRO SE 176 Hancock St. Newark, Ohio 43055 And SHAWN PARRISH, PRO SE 352 N. Cedar St. Newark, Ohio 43055

Hoffman, P.J.

{¶1} Respondent-appellant State of Ohio appeals the June 18, 2010 Judgment Entry entered by the Licking County Court of Common Pleas granting Petitioner-Appellee Shawn Parrish's petition contesting his reclassification as a Tier II sexual offender.

STATEMENT OF THE CASE

{¶2} On July 22, 1998, Appellee was convicted in the state of North Carolina of indecent liberty with a minor, a class F felony. Appellee subsequently moved to the State of Ohio, and resides in Licking County. There is no evidence Appellant was classified as a sexually oriented offender, or any other sexual offender classification, in Ohio, North Carolina, or elsewhere.

{¶3} On November 26, 2007, pursuant to the Adam Walsh Act, the Ohio Attorney General sent Appellee notice of his classification as a Tier II sex offender.

{¶4} On January 26, 2008, Appellee filed a timely petition to contest his classification.

{¶5} On April 9, 2010, the petition came on for hearing. Via Judgment Entry of June 18, 2010, the trial court granted Appellee's petition, citing the Ohio Supreme Court's pronouncement in *State v. Bodyke*, 2010-Ohio-2424.

{¶6} The State now appeals, assigning as error:

{¶7} "I. THE TRIAL COURT ERRED IN FINDING THAT A SEX OFFENDER'S CLASSIFICATION WAS VOID BASED UPON THE SEPARATION OF POWER DOCTRINE OF THE OHIO CONSTITUTION, WHERE THE UNDERLYING SEX OFFENSE CONVICTION OCCURRED OUT-OF-STATE."

{¶8} In *Bodyke*, the Ohio Supreme Court syllabus reads,

{¶9} "2. R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders who have already been classified by court order under former law, impermissibly instruct the executive branch to review past decisions of the judicial branch and thereby violate the separation-of-powers doctrine.

{¶10} "3. R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders whose classifications have already been adjudicated by a court and made the subject of a final order, violate the separation-of-powers doctrine by requiring the opening of final judgments."

{¶11} The Supreme Court explained:

{¶12} "The AWA's provisions governing the reclassification of sex offenders already classified by judges under Megan's Law violate 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. It is well settled that a legislature cannot enact laws that revisit a final judgment. ***

{¶13} "Thus, we conclude that R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders who have already been classified by court order under former law, impermissibly instruct the executive branch to review past decisions of the judicial branch and thereby violate the separation-of-powers doctrine.

{¶14} "We further conclude that R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders whose classifications have already been

adjudicated by a court and made the subject of a final order; violate the separation-of-powers doctrine by requiring the opening of final judgments.

{¶15} "***

{¶16} "For the foregoing reasons, we hold that R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders who have already been classified by court order under former law, impermissibly instruct the executive branch to review past decisions of the judicial branch and thereby violate the separation-of-powers doctrine. In addition, R.C. 2950.031 and 2950.032 violate the separation-of-powers doctrine by requiring the opening of final judgments."

{¶17} The State argues because Appellee was convicted in North Carolina of a sex offense substantially similar to R.C. 2907.05(A)(4), gross sexual imposition, with a victim under the age of 13, when he subsequently moved to Ohio, he became a "sexually oriented offender" under Megan's Law. The State asserts because no classification has been made by the Ohio judiciary or the judiciary of any other state, there cannot be a violation of the separation-of-powers doctrine as found in *Bodyke*. We disagree. While there may not have been a reclassification, the fact the North Carolina court did not classify Appellant a sexual offender still constitutes a final judgment. As also found in *Bodyke,* for the Ohio Attorney General to now classify Appellant violates the separation-of-powers doctrine by requiring reopening of a final judgment.

{¶18} In *Majewski v. State*, 2010-Ohio-3178, the Eighth District addressed a similar factual scenario, holding:

{¶19} "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.

{¶20} "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.

{¶21} "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. ***

{¶22} "***

{¶23} "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 entrusted 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.

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

{¶25} " '**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.**

{¶26} "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."

{¶27} This Court in *Clager v. State* (Dec. 8, 2010), Licking App. No. 10-CA-49, addressed the issue raised herein, and the holding in *Bodyke*:

{¶28} "After a thorough discussion on Ohio's evolving law governing the registration and classification of sex offenders and the ensuing community-notification requirements, along with the separation of powers doctrine, Justice O'Connor explained the precise holding of the *Bodyke* case at ¶ 54 and 60-61:

{¶29} " 'With these principles in mind, we turn to a key aspect of the AWA-the reclassification scheme. That scheme requires the attorney general to reclassify offenders who previously were classified by Ohio judges according to the provisions in Megan's Law and its precursor.

{¶30} " 'Thus, we conclude that R.C. 2950.031 and R.C. 2950 .032, which require the attorney general to reclassify sex offenders who have already been classified by court order under former law, impermissibly instruct the executive branch to review past decisions of the judicial branch and thereby violate the separation-of-powers doctrine.

{¶31} " 'We further conclude that R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders whose classifications have already been adjudicated by a court and made the subject of a final order, violate the separation-of-powers doctrine by requiring the opening of final judgments."

{¶32} "Using these statements as a template, we could easily conclude that the Supreme Court of Ohio did not speak to the out-of-state offender who had never been classified by court order under Ohio's Megan Law. Appellant argues this conclusion would be incorrect because within the numerous cases reviewed in *In re Sexual Offender Reclassification Cases,* 126 Ohio St.3d 322, 2010-Ohio-3753, ¶ 15 and 63, there is in fact a reversal of a case "as to those portions of the judgments that rejected constitutional challenges to the Adam Walsh Act on separation-of-powers grounds" involving an out-of-state offender namely, "2010-0100. *Robinson v. State,* Hamilton App. No. C-090002.***

{¶33} "***

{¶34} "*** A review of the First District's judgment entry in *Robinson* leads us to the conclusion that the defendant was an out-of-state offender, was never classified in Ohio under Megan's Law, and the assignments of error involved constitutional challenges, including the separation of powers doctrine:

{¶35} " 'Robinson's second, third, and fourth assignments of error are overruled because the retroactive application of Senate Bill 10's tier-classification and registration requirements does not violate the prohibition on retroactive laws contained in Section 28, Article II of the Ohio Constitution, the Double Jeopardy Clause of the Ohio Constitution, or the separation-of-powers doctrine.* * *Robinson's arguments under the United States Constitution are also overruled on *Sewell's* [181 Ohio App.3d 280, 2009-Ohio-872] reasoning.' (Footnote omitted in original.)

{¶36} "We therefore concur with appellant's position that out-of-state offenders are not subject to the Ohio Attorney General's reclassification as it violates the separation of powers doctrine."

{¶37} Pursuant to this Court's prior opinion in *Clager,* the trial court did not err in granting Appellee's petition. Appellant was convicted of a sex offense in the State of North Carolina, and the trial court in North Carolina judicially considered and apparently determined Appellant was not a sex offender requiring classification or registration. Therefore, the Ohio Attorney General's reclassification violates the separation of powers doctrine.

{¶38} The judgment of the Licking County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Wise, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ John W. Wise
HON. JOHN W. WISE

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

SHAWN PARRISH	:	
	:	
Petitioner-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
STATE OF OHIO	:	
	:	
Respondent-Appellant	:	Case No. 10-CA-64

For the reasons stated in our accompanying Opinion, the judgment of the Licking County Court of Common Pleas is affirmed. Costs to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ John W. Wise
HON. JOHN W. WISE