[Cite as *State v. Arnold*, 2015-Ohio-2019.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- CODY ARNOLD Defendant-Appellant	JUDGES: Hon. W. Scott Gwin, P.J. Hon. William B. Hoffman, J. Hon. Craig R. Baldwin, J. Case No. CT2015-0004 O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Muskingum County Court of Common Pleas, Case No. CR2014-0268
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	May 21, 2015

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
D. MICHAEL HADDOX Prosecuting Attorney Muskingum County, Ohio GERALD V. ANDERSON II Assistant Prosecuting Attorney Muskingum County, Ohio 27 North St., P.O. Box 189 Zanesville, Ohio 43701	BENJAMIN W. WHITACRE Micheli, Baldwin, Northrup LLP 3808 James Court, Suite 2 Zanesville, Ohio 43701

Hoffman, J.

{¶1} Defendant-appellant Cody Arnold appeals his conviction entered by the Muskingum County Court of Common Pleas on one count of failure to register, in violation of R.C. 2950.05(D). Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} Following conviction on three counts of unlawful sexual conduct with a minor, Appellant was placed under community controlled supervision for a period of three years commencing on February 27, 2012. He served 180 days in jail, completed a treatment course and 200 hours of public service. Appellant was further ordered to register as a Tier II Sex Offender. The registration required Appellant identify any internet identifiers he used.

{¶3} On August 14, 2014, Melanie Richert of Muskingum County Adult Probation conducted a home visit of Appellant's residence. Pursuant to Appellant's probation, he was to have registered all email and internet identifiers at the time of his initial registration. Further, he was prohibited from having any type of media devices, such as cell phones, laptops or computers. On the date of the home visit, Richert found a laptop computer visible and a cell phone which Appellant attempted to hide.

{¶4} On September 3, 2103, Appellant was indicted on one count of failing to register, a felony of the second degree, in violation of R.C. 2950.05(D); and four counts of tampering with records, felonies of the third degree, in violation of 2913.42(A)(1).

{¶5} On November 12, 2014, Appellant filed a motion to dismiss the indictment asserting no penalty exists for failure to notify of a change of email address or internet

identifiers; therefore, failure to provide notice of such change under Ohio law cannot constitute a criminal offense.

{¶6} On November 24, 2014, Appellant entered a plea of no contest to the charge of failure to register, in violation of R.C. 2950.05(D). The state dismissed the remaining charges, in exchange for the plea.

{¶7} Via Judgment Entry of November 26, 2014, the trial court memorialized the decision to deny the motion to dismiss the indictment and accept the plea of no contest. The trial court found Appellant guilty of failure to register (internet identifier), a felony of the second degree.

{¶8} The trial court imposed a sentence of two years in prison to be served concurrently to an unrelated case. Appellant received credit for time served. The trial court further imposed a period of mandatory post-release control of three years.

{¶9} Appellant appeals, assigning as error:

{¶10} "THE TRIAL COURT ERRED IN OVERRULING THE MOTION TO DISMISS INDICTMENT."

{¶11} Appellant maintains the trial court erred in failing to dismiss the indictment as no penalty at law exists under the statute for failure to notify of internet identifiers.

{¶12} Appellant cites the Second District's decision in *State v. Chessman*, 188 Ohio App.3d 428, 2010-Ohio-3239, holding there was no penalty at law for failing to provide notice of a change in telephone numbers, therefore no crime was committed. In *Chessman*, the defendant failed to provide a new cell phone number he obtained after he registered his information with the Sheriff's Department. The defendant was arrested and indicted on a charge of failure to notify of a change of telephone number under R.C.

2950.05(D), in violation of section (F) of that statute. The Second District held the legislature had not provided a penalty for violating the change in telephone requirement. The Court stated,

> Because there is no penalty, failing to provide notice of a change in telephone numbers cannot, under R.C. 2901.03, constitute a criminal offense. Because Chessman's indictment, therefore, does not charge an offense, the trial court had no subject-matter jurisdiction over this case. See *State v. Hous,* Greene App. No. 02CA116, 2004-Ohio-666, 2004 WL 259261, at ¶ 15, quoting *State v. Cimpritz* (1953), 158 Ohio St. 490, 49 O.O. 418, 110 N.E.2d 416, at paragraph six of the syllabus. Because the court had no subject-matter jurisdiction, the indictment should have been dismissed, and the trial court's judgment of conviction is void. Id.

{¶13} We find the case before us distinguishable from the facts presented in *Chessman*. Here, Appellant did not fulfill his initial duty to register. Where the registration form clearly indicated Appellant was to provide all email identifiers at the time of registration, including email and internet identifiers, e.g. Facebook, Appellant failed to provide the same. Therefore, Appellant failed to register initially; he did not fail to update his registration as in *Chessman*, where the defendant properly completed his registration but failed to update the same.

{¶14} We also distinguish our decision herein from the Eighth District's holding in *State v. Knox,* 8th Dist No. 98027*,* 2012-Ohio-3821. In *Knox,* the defendant appeared at the Cuyahoga County Sheriff's office, obtained a sexual offender registration form, completed it, and placed it into the appropriate basket. Knox indicated on the form his

address was “2100 Lakeside Avenue” in Cleveland, Ohio. This address is that of the Lutheran Metropolitan Ministries Men's Shelter. According to the shelter's records, Knox had not been present there since September 29, 2010.

{¶15} When sheriff's deputies checked with the men's shelter, they discovered Knox had not “scanned in” with the facility so as to indicate he was at the address he listed on his registration form. As a result, Knox was indicted in Count 1 for violating R.C. 2950.04(E), failure to register as a sexual offender. The indictment carried a second count for violating R.C. 2913.42(A), tampering with records.

{¶16} On appeal, the Eighth District held,

> R.C. 2950.04 is intended to ensure that the offender appears and completes a form for registration; if the offender does not, he or she is subject to prosecution for the failure. The trial court thus correctly interpreted R.C. 2950.04(C) when it determined that “registration is complete” with only the physical action of handing a filled-out form to the sheriff.

{¶17} We respectfully disagree with our brethren from the Eight District. R.C. 2950.04(B) reads,

> (B) An offender or delinquent child who is required by division (A) of this section to register in this state personally shall obtain from the sheriff or from a designee of the sheriff a registration form that conforms to division (C) of this section, shall complete and sign the form, and shall return the completed form together with the offender's or delinquent child's photograph, copies of travel and immigration documents, and any other

> required material to the sheriff or the designee. The sheriff or designee shall sign the form and indicate on the form the date on which it is so returned. *The registration required under this division is complete when the offender or delinquent child returns the form, containing the requisite information*, photograph, other required material, signatures, and date, to the sheriff or designee. (Emphasis added).

{¶18} We find the statute requires the submission of an accurate and complete registration form.

{¶19} Appellant's conviction for failure to register in the Muskingum County Court of Common Pleas is affirmed.

By: Hoffman, J.

Gwin, P.J. and

Baldwin, J. concur