

[Cite as *Lewis v. Leis*, 2009-Ohio-3096.]

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

JOHNNIE P. LEWIS,	:	APPEAL NO. C-080216
	:	TRIAL NO. A-0709613
Plaintiff-Appellant,	:	
	:	<i>DECISION.</i>
vs.	:	
SIMON LEIS, in his official capacity as	:	
HAMILTON COUNTY SHERIFF,	:	
	:	
and	:	
	:	
JOSEPH DETERS, in his official	:	
capacity as HAMILTON COUNTY	:	
PROSECUTOR,	:	
	:	
Defendants-Appellees.	:	

Civil Appeal From: Hamilton County Common Pleas Court

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: June 26, 2009

*David A. Singleton*, for Plaintiff-Appellant,

*Joseph T. Deters*, Hamilton County Prosecuting Attorney, and *David T. Stevenson*,  
Assistant Prosecuting Attorney, for Defendants-Appellees.

Note: We have removed this case from the accelerated calendar.

*Per Curiam.*

{¶1} Plaintiff-appellant Johnnie P. Lewis appeals from the trial court’s dismissal of his complaint and motions seeking declaratory and injunctive relief to prevent the defendants-appellees, the Sheriff and the Prosecuting Attorney of Hamilton County, Ohio, from enforcing Ohio’s sexual-offender registration requirements against him. Lewis had completed his sentence for a sexually oriented offense in 1986. Because the sexual-offender registration obligations under R.C. 2950.04 apply only to those who were convicted and sentenced to prison for a sexually oriented offense and who were released from prison for that sexually oriented offense on or after July 1, 1997, we reverse.

{¶2} In 1985, Lewis pleaded guilty to one count of gross sexual imposition and one count of aggravated burglary. The trial court accepted his pleas and imposed a prison term of 18 months for the gross sexual imposition and an indefinite prison term of 9 to 25 years for the aggravated burglary. The court ordered the terms to be served concurrently. Lewis began serving the sentences in July 1985. Thus Lewis’s sentence for gross sexual imposition was completed in 1986, and the record does not reflect that he was convicted of a sexually oriented offense after that date.

{¶3} In 2000, Lewis remained in prison for the aggravated burglary and was returned to Hamilton County for a sexual-offender classification hearing. The trial court adjudicated Lewis to be a sexual predator. But this court reversed that determination and remanded the case for further proceedings.<sup>1</sup> In September 2001, the trial court found Lewis “not to be a sexual predator” and classified him as a sexually oriented offender. Lewis was released from prison on August 19, 2002.

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<sup>1</sup> See *State v. Lewis* (Dec. 8, 2000), 1st Dist. No. C-000217.

{¶4} In October 2007, in light of the Ohio Supreme Court’s then recent decision in *State v. Champion*,<sup>2</sup> Lewis commenced this action seeking a declaration that he did not have a duty to register as a sexual offender. In a motion for preliminary and permanent injunctions, Lewis argued that he had no duty to register because he had finished his sentence for gross sexual imposition, a sexually oriented offense, before July 1, 1997, the date the registration duties had become effective. Lewis argued that *State v. Champion*—in which the supreme court held that a sex offender who had been released from his prison term prior to July 1, 1997, and had subsequently been returned to prison on a parole violation did not have a duty to register—resolved the issue in his favor.<sup>3</sup> In their motion to dismiss, the appellees argued that Lewis “was never released [from prison] prior to July 1, 1997 and is therefore \* \* \* not within the scope of persons covered by the *Champion* decision.”

{¶5} The trial court granted the appellees’ motion to dismiss, declaring that Lewis had a duty to register because he had been serving a sentence for a sexually oriented offense on or after July 1, 1997, and had not been “released in any manner from this term of imprisonment until August 19, 2002.” The trial court also ruled that Lewis should have contested these issues at the sexual-offender classification proceeding in 2001. In this appeal, Lewis seeks a declaration that he has “no duty to register as a sex offender” and urges this court to “reverse the trial court’s entry granting the [appellees’] motion to dismiss.”<sup>4</sup>

{¶6} We note that, in December 2007, two months after initiating this declaratory-judgment action, Lewis received a notice from the Ohio Attorney General reclassifying him as a Tier I sexual offender under a new sexual-classification scheme.<sup>5</sup> “In

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<sup>2</sup> See *State v. Champion*, 106 Ohio St.3d 120, 2005-Ohio-4098, 832 N.E.2d 718.

<sup>3</sup> See *State v. Champion*, syllabus.

<sup>4</sup> Appellant’s Brief at 10.

<sup>5</sup> See *id.* at fn. 8.

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2007, the General Assembly enacted Am.Sub.S.B. No. 10 ('Senate Bill 10') to implement the federal Adam Walsh Child Protection and Safety Act of 2006."<sup>6</sup> Senate Bill 10 introduced major changes to R.C. Chapter 2950, including increasing the period of required registration for various offenders. Tier I offenders are now required to register for 15 years and to verify their addresses annually.<sup>7</sup> Lewis is contesting this classification in a separate action, *Lewis v. Ohio*, in the Hamilton County Common Pleas Court, under case number SP0800222. In that action, Lewis is seeking, inter alia, a declaration that the new classification scheme does not apply to sexual offenders like Lewis who did not have a duty to register on or after July 1, 2007. Lewis has stated that the separate action has been "continued" pending the resolution of this appeal.<sup>8</sup>

{¶7} In his sole assignment of error, Lewis contends that the trial court erred in ruling that he has a duty to register with law enforcement. Lewis asserts that although he is a sexually oriented offender, because he was not serving a prison term for a sexually oriented offense on or after July 1, 1997, he has no duty to register with the appellees. We agree.

{¶8} A sexual offender's duty to register arises solely from R.C. 2950.04. Even if an offender has been "adjudicated a sexual predator [pursuant to R.C. 2950.09], he has no duty to register [if] he does not fit with the plain language of R.C. 2950.04 describing categories of compulsory registrants."<sup>9</sup> The parties agree that the version of former R.C. 2950.04(A)(1)(a) in effect at all times pertinent to this appeal provided that registration was required only when "[r]egardless of when the sexually oriented offense was

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<sup>6</sup> *Sewell v. Ohio*, 1st Dist. No. C-080503, 2009-Ohio-872, ¶1.

<sup>7</sup> See R.C. 2950.06(B)(1) and 2950.07(B)(3).

<sup>8</sup> Appellant's Brief at fn. 8.

<sup>9</sup> *State v. Bellman*, 86 Ohio St.3d 208, 212, 1999-Ohio-95, 714 N.E.2d 381; see, also, *State v. Jones*, 8th Dist. No. 86251, 2006-Ohio-1338, ¶6.

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committed, an offender \* \* \* is sentenced for the sexually oriented offense to a prison term \* \* \* and, on or after July 1, 1997, is released in any manner from the prison term \* \* \*.”<sup>10</sup>

{¶9} In *State v. Champion*, the Ohio Supreme Court reviewed whether an offender, sentenced in 1978 to a two-to-five-year prison term for gross sexual imposition to be served concurrently with another sentence not imposed for a sexually oriented offense, was required to register under R.C. 2950.04(A)(1)(a). The court determined that when Champion was released on parole in 1989, the two-to-five-year sentence for the sexually oriented offense had been completed.<sup>11</sup> When he was returned to prison on a parole violation, the court held, he had not been returned for the sexual offense. Therefore, when he was released after July 1, 1997, he was not being released from confinement for a sexual offense and he was “not required to register under R.C. 2950.04(A)(1)(a) \* \* \*.”<sup>12</sup>

{¶10} The supreme court explained that “[a]s in *Bellman*<sup>13</sup> and *Taylor*,<sup>14</sup> we must follow the statutory language carefully. R.C. 2950.04(A)(1)(a) states: ‘Regardless of when the sexually oriented offense was committed, an offender who is sentenced for the sexually oriented offense to a prison term \* \* \* and, on or after July 1, 1997, is released in any manner from the prison term’ must register. The language says released ‘from *the* prison term,’ not released from *any* prison term, as the state would have it. (Emphasis added [in the court’s opinion].) Champion’s sentence [for gross sexual imposition] was two to five years, but his concurrent terms caused him to serve almost 11 years before his first release in 1989. The [gross-sexual-imposition] prison sentence had been completed, at the very latest, in 1983 (assuming the maximum sentence of five years). Champion could not,

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<sup>10</sup> See Appellant’s Brief at 4-5 and Appellees’ Brief at 7; see, also, *State v. Champion* at ¶9.

<sup>11</sup> See *State v. Champion* at ¶9.

<sup>12</sup> *State v. Champion*, syllabus; see, also, *Coston v. Petro* (S.D. Ohio 2005), 398 F.Supp.2d 878, 883.

<sup>13</sup> 86 Ohio St.3d 208, 209, 1999-Ohio-95, 714 N.E.2d 381.

<sup>14</sup> 100 Ohio St.3d 172, 2003-Ohio-5452, 797 N.E.2d 504, ¶9-10.

therefore, have been released from prison on or after July 1, 1997, on his [gross sexual imposition] conviction.”<sup>15</sup>

{¶11} Thus the registration obligations under R.C. 2950.04 apply only to those who were convicted and sentenced to prison for a sexually oriented offense and who were released from prison for that sexually oriented offense on or after July 1, 1997.<sup>16</sup> To be required to register as a sex offender in Ohio, an offender must have served a term of imprisonment for a sexually oriented offense on or after July 1, 1997.<sup>17</sup>

{¶12} Here, Lewis’s sentence for gross sexual imposition—a sexually oriented offense—expired in 1986, nearly 11 years before the July 1, 1997, date triggering a registration obligation. Lewis completed his sentence for the sexually oriented offense in 1986 and was not subject to any registration requirements for the gross-sexual-imposition conviction.<sup>18</sup>

{¶13} Lewis was also imprisoned for aggravated burglary, in violation of R.C. 2911.11. He was not released from that term of imprisonment until August 2002, well after the 1997 effective date of the sexual-offender statutes. But contrary to the trial court’s conclusions in its letter to the parties, journalized by the court on February 13, 2008, aggravated burglary is not a sexually oriented offense.

{¶14} The duty to register imposed under R.C. 2960.04 only applies to offenders who have been convicted of a sexually oriented offense. R.C. 2950.01 identifies those offenses that are sexually oriented offenses, including a number of offenses that necessarily involve sexual misconduct such as rape and gross sexual imposition.<sup>19</sup> The statute also defines other offenses that, when committed with sexual motivation, become

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<sup>15</sup> *State v. Champion* at ¶9.

<sup>16</sup> See *State v. Champion*, syllabus.

<sup>17</sup> See *State v. Townsend*, 8th Dist. No. 90890, 2009-Ohio-467, ¶10; see, also, *State v. Jones*, 8th Dist. No. 86251, 2006-Ohio-1338, ¶17.

<sup>18</sup> See *State v. Jones* at ¶17.

<sup>19</sup> See R.C. 2950.01(A)(1); see, also, former R.C. 2950.01(D)(1).

sexually oriented offenses. These include aggravated murder, murder, felonious assault,<sup>20</sup> and kidnapping.<sup>21</sup> Aggravated burglary, as defined in R.C. 2911.11, is not one of these enumerated offenses. Thus serving a prison term for aggravated burglary does not trigger a duty to register because it is not a sexually oriented offense under R.C. 2950.01.<sup>22</sup> Therefore, the trial court erred when it concluded that after July 1, 1997, Lewis had been serving a term of imprisonment for a sexually oriented offense.

{¶15} Finally, the trial court’s conclusion that Lewis’s claim should have been raised during the sexual-classification hearings and was barred by the doctrine of res judicata was also misplaced. Both classification hearings were held before Lewis’s release from prison, before any duty to register had arisen, and before the release of the supreme court’s decision in *State v. Champion*. We note that an offender’s classification is “distinct from the duty to register.”<sup>23</sup> And since neither classification proceeding adjudicated, on the merits, the disputed issue in this case—whether Lewis has a duty to register—we hold that res judicata did not bar its resolution here.

{¶16} The assignment of error is sustained.

{¶17} App.R. 12(B) empowers an appellate court to render the judgment that a court of common pleas should have rendered. And Section 3(B)(1)(f), Article IV of the Ohio Constitution and R.C. 2721.02 confer upon an appellate court the authority to modify a trial court’s declaration of the rights of the parties to a declaratory-judgment action.<sup>24</sup>

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<sup>20</sup> See R.C. 2950.01(A)(4).

<sup>21</sup> See R.C. 2950.01(A)(7), 2950.01(A)(8), and 2950.01(A)(9); see, also, former R.C. 2950.01(D)(1)(c).

<sup>22</sup> See *State v. Guy*, 7th Dist. No. 06 CO 12, 2007-Ohio-3178, ¶28; see, also, *Phan v. Leis*, 1st Dist. No. C-050842, 2006-Ohio-5898, ¶9; *State v. Hicks* (1998), 128 Ohio App.3d 647, 650, 716 N.E.2d 279.

<sup>23</sup> *State v. Taylor* at ¶10.

<sup>24</sup> See *Powers v. Meyers* (1995), 101 Ohio App.3d 504, 513, 655 N.E.2d 1358; see, also, *Misrach v. Montgomery* (1993), 90 Ohio App.3d 187, 628 N.E.2d 126.

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{¶18} Therefore, we declare that Lewis, having completed his sentence for a sexually oriented offense in 1986, is not subject to any registration requirements for his 1985 convictions. The judgment of the trial court granting the appellees' motion to dismiss is reversed. And this cause is remanded to the trial court for further proceedings on Lewis's motions for permanent and preliminary injunctions consistent with law and with this decision.

Judgment reversed and cause remanded.

**SUNDERMANN, P.J., PAINTER and CUNNINGHAM, JJ.**

*Please Note:*

The court has recorded its own entry on the date of the release of this decision.