

[Cite as *Garrity v. State*, 2010-Ohio-2265.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

JAY GARRITY	:	
Plaintiff-Appellant	:	C.A. CASE NO. 23359
vs.	:	T.C. CASE NO. 09CV2051
STATE OF OHIO	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellee	:	

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O P I N I O N

Rendered on the 21st day of May, 2010.

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GRADY, J.:

{¶ 1} On March 12, 2009, Jay Garrity filed a Petition (Dkt. 1) and a Motion (Dkt. 3) seeking relief pursuant to R.C. 2950.031(E) and 2950.032(E). Garrity also asked for a hearing on his requests for relief. The trial court dismissed Garrity's petition, holding that it lacks jurisdiction to grant the relief requested.

{¶2} R.C. 2950.031(E) and 2950.032(E) authorize persons who have been sent a registered letter by the Attorney General notifying the person of his/her reclassification pursuant to R.C. Chapter 2950 as a tier I, II, or III sex offender, and the registration requirements those classifications impose, "to contest whether those requirements apply at all to the offender." Petitioners are entitled to a hearing on their request.

{¶3} Garrity alleged that he had been convicted of three sex offenses in Oklahoma in 2009, for which he was sentenced to a term of unsupervised probation; that he now resides in Montgomery County and registers with the Sheriff pursuant to R.C. Chapter 2950; and that he was notified of his reclassification as a tier III sex offender and the lifetime registration requirement that reclassification imposes. Garrity contended that the reclassification provision does not apply to him, and that the provision is unconstitutional for multiple reasons.

{¶4} On March 26, 2009, the common pleas court overruled Garrity's petition and motion, without a hearing. The court pointed out that R.C. 2950.031 applies only to offenders who were required to register prior to December 1, 2007, and that R.C. 2950.032 applies only to sex offenders who, on December 1, 2007, were serving a prison term for a sexually related offense. Therefore, because Garrity was not convicted until 2009, and served

no prison time, neither the reclassification provisions of R.C. 2950.031 nor the appeal from reclassification provisions of 2950.032 applies to him. The court found that Garrity is therefore not entitled to the relief that R.C. 2950.031(E) and 2950.032(E) afford, and dismissed his petition for lack of jurisdiction. The court found that Garrity's remedy is instead an appeal of his Oklahoma convictions.

{¶5} Garrity filed a timely notice of appeal. He repeats his constitutional claims on appeal, in ten assignments of error.

We have previously rejected those arguments. *State v. Heys*, Miami App. No. 09CA04, 2009-Ohio-5397. Garrity also argues that the reclassification provisions of R.C. 2950.031 and 2950.032 are contrary to the purposes and principles of sentencing. However, we need not decide those claims.

{¶6} R.C. 2950.032(E) provides that an offender who is notified of his reclassification "may contest the matters that are identified in division (E) of section 2950.031 of the Revised Code." That section provides that a person who is notified of his reclassification "may contest whether those new registration requirements apply at all to the offender." R.C. 2950.031(E) further provides that if following a hearing, the court finds by clear and convincing evidence that the requirements do not apply, the court shall state its findings, "shall issue an order that

specifies that the new registration requirements do not apply to the offender," and serve a copy of its order on the sheriff and "the bureau of criminal identification and investigation."

{¶ 7} R.C. 2950.031(E) provides for relief from reclassification as a tier I, II, or III sex offender, which is the relief Garrity sought. If Garrity demonstrates that the grounds for reclassification do not apply to him, which is what the trial court found, R.C. 2950.031(E) requires the court to grant relief from the reclassification of which Garrity was notified by the Attorney General. The trial court erred when, upon finding the grounds for relief for which R.C. 2950.031(E) provides, the court instead held that it lacks jurisdiction to grant that relief.

The court plainly and manifestly has jurisdiction pursuant to R.C. 2950.031(E) to grant relief from reclassification upon the findings the court made, if Garrity is entitled to that relief.

{¶ 8} We asked the parties to address these issues by way of supplemental briefs. The State argues that the trial court was correct in finding that it lacks jurisdiction to grant relief pursuant to R.C. 2950.031(E), because Garrity is required by R.C. 2950.04(A)(4) to register as a sex offender in Ohio, having been subject to a prior registration requirement in Oklahoma, following his conviction there for a sex offense. Garrity disputes that contention, arguing that he was never required to register in

Oklahoma.

{¶ 9} R.C. 2950.031(E) and 2950.032(E) provide relief and a procedure to obtain that relief from a reclassification as a tier I, II or III sex offender upon notice of that reclassification given by the Attorney General. Those sections do not provide for relief from prior sex offender classifications or the registration requirements attached to those prior classifications, if there were any. Whether Garrity was subject to any prior registration requirements in Oklahoma that could subject him to reclassification is unclear from this record.

{¶ 10} R.C. 2950.032(E) requires the trial court to hold a hearing on the Petition Garrity filed, and to grant relief authorized by R.C. 2950.031(E) if the court finds by clear and convincing evidence that the specified grounds for relief are shown. We believe that Garrity is entitled to a hearing, and that the issues of fact and law in dispute require a hearing for their proper resolution.

{¶ 11} The judgment from which the appeal is taken will be reversed, and the matter will be remanded for further proceedings consistent with this opinion.

FAIN, J. And FROELICH, J., concur.

Copies mailed to:

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Hon. Mary Katherine Huffman