

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

In the matter of: J.K.

Court of Appeals Nos. WD-09-054
WD-09-055

Trial Court Nos. 2008 JA 0746
2009 JA 0629

DECISION AND JUDGMENT

Decided: March 19, 2010

* * * * *

Timothy Young, Ohio Public Defender, and Angela Miller, Assistant Public Defender, for appellant.

Paul A. Dobson, Wood County Prosecuting Attorney, Timothy C. Atkins and Jacqueline M. Kirian, Assistant Prosecuting Attorneys, for appellee.

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OSOWIK, J.

{¶ 1} This is a consolidated appeal from a judgment of the Wood County Court of Common Pleas, Juvenile Division, that found appellant to be a delinquent child as to one count of sexual battery and classified appellant as a Tier III sex offender. For the reasons that follow, the judgment of the trial court is reversed as to appellant's sex

offender classification and remanded to the trial court for further proceedings consistent with this decision.

{¶ 2} The following facts are relevant to the issues before this court. On June 11, 2008, appellant entered an admission to one count of sexual battery in violation of R.C. 2907.03(A)(3), a felony of the second degree if committed by an adult. On July 16, 2008, the trial court found appellant to be a delinquent child. Appellant received a suspended commitment to the Department of Youth Services for a minimum of one year, up to the age of 21 years, and was ordered to complete a program at the Juvenile Residential Center of Northwest Ohio. After the disposition orders were issued, the trial court proceeded to classify appellant as a Tier III juvenile sex offender registrant.

{¶ 3} On June 29, 2009, appellant filed a motion for leave to file a delayed appeal with this court in case No. 2008 JA 0746 (appellant's sexual battery conviction). Also on that date, appellant filed a timely appeal with this court in case No. 2009 JA 0629 (arising from the trial court's finding in June 2009 that appellant was delinquent as to one count of violating probation).¹ On July 14, 2009, this court consolidated the two appeals as they involved common questions of law and fact.

{¶ 4} Appellant sets forth the following assignments of error:

{¶ 5} "Assignment of Error I

¹Despite filing a notice of appeal, appellant did not raise the issue of his probation violation in his appellate brief.

{¶ 6} "The trial court abused its discretion when it found that J.K.'s classification as a Tier III juvenile sex offender registrant was mandatory in violation of R.C. 2950.01(E)-(G).

{¶ 7} "Assignment of Error II

{¶ 8} "J.K. was denied effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section Sixteen of the Ohio Constitution when defense counsel failed to familiarize himself on Ohio's juvenile offender classification procedures."

{¶ 9} In support of his first assignment of error, appellant asserts that, while the trial court recognized that it had discretion in deciding initially whether to classify appellant as a sex offender, the court incorrectly believed that it was required to classify appellant as a Tier III offender due to the nature of the offense. Appellant asserts that requirements for juvenile registrants differ from the requirements for adults, whose tier classification is determined solely based on the offense for which they are convicted, because specific tier determination for juveniles is discretionary.

{¶ 10} We note that appellee, state of Ohio, has agreed that the juvenile court erred in failing to recognize its discretion with regard to determining the appropriate tier into which appellant should be classified and concedes that this matter should be remanded to the juvenile court.

{¶ 11} Upon consideration of the foregoing, we find appellant's first assignment of error to be well-taken. Further, in light of that finding, appellant's second assignment of error as to ineffective assistance of counsel is rendered moot.

{¶ 12} On consideration whereof, the judgment of the Wood County Court of Common Pleas, Juvenile Division, is reversed as to appellant's sex offender classification and this matter is remanded to the trial court for further proceedings consistent with this decision. Costs of this appeal are assessed to appellee pursuant to App.R. 24.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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