

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Kirk T. King,	:	
	:	
Petitioner-Appellee,	:	
	:	No. 11AP-1021
v.	:	(C.P.C. No. 08MSM-01-86)
	:	
State of Ohio,	:	(REGULAR CALENDAR)
	:	
Respondent-Appellant.	:	

D E C I S I O N

Rendered on June 21, 2012

Yeura R. Venters, Public Defender, and *David L. Strait*, for appellee.

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Respondent-appellant, the State of Ohio, appeals from an entry of the Franklin County Court of Common Pleas that vacated the reclassification of petitioner-appellee, Kirk T. King, under the Adam Walsh Act and reinstated his classifications under Megan's Law. For the following reasons, we reverse that judgment and remand the matter with instructions.

Factual and Procedural Background

{¶ 2} In 1992, King was convicted of one count of felonious sexual penetration in the Licking County Court of Common Pleas. In 2004, a judge of that court conducted a sexual predator hearing and classified King as a sexually oriented offender under the then-effective version of Ohio's sexual offender laws, R.C. Chapter 2950, commonly known as Megan's Law.

{¶ 3} Effective January 1, 2008, Ohio repealed Megan's Law and replaced it with the current version of those laws, commonly known as the Adam Walsh Act ("AWA"). Under the AWA, King was automatically reclassified as a Tier III sexual offender and was subjected to the increased requirements of that Act. Pursuant to R.C. 2950.031(E) and 2950.032(E), King filed a petition to contest his reclassification under the AWA.

{¶ 4} In light of the Supreme Court of Ohio's decision in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, the trial court granted King's petition and vacated his reclassification under the AWA. *See also State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424 (reclassifications of previously-convicted sexual offenders under the AWA unconstitutional). Although the heading of the trial court's entry noted that King's classification under Megan's Law was reinstated, the trial court wrote in the body of its entry that King's ongoing registration requirements would be "governed by the law in effect at the time of his offense, not [the AWA]."

{¶ 5} The State appeals and, having withdrawn its second assignment of error, assigns the following error:

The Common Pleas Court erred in determining that petitioner's registration requirements are "governed by the law in effect at the time of his offense * * *," as Ohio's R.C. Chapter 2950 in its most recent Megan's Law version sets forth the applicable registration requirements.

The State's Assignment of Error—King's Registration Requirements under R.C. Chapter 2950

{¶ 6} The State argues that although the heading of the trial court's entry correctly vacated King's reclassification under the AWA and reinstated his previous classification under Megan's Law, the trial court erred by then noting in the body of its entry that his ongoing registration requirements would be "governed by the law in effect at the time of his offense." We agree.

{¶ 7} In *Williams*, the defendant committed his sexual offense in 2007 before the enactment of the AWA. Notwithstanding, the trial court applied the registration requirements of the AWA to Williams. The Supreme Court of Ohio concluded that the registration requirements of the AWA violated the Ohio Constitution's prohibition from enacting retroactive laws when imposed on sex offenders who committed their offenses before the enactment of the Act. *Id.* at ¶ 22. Because Williams committed his sex offense

before the enactment of the AWA, the court remanded the matter for resentencing "under the law in effect at the time Williams committed the offense." *Id.* at ¶ 23. Apparently, the trial court took that language from *Williams* and applied it to King's case. A critical factual difference, however, exists between *Williams* and the present case. *Snyder v. State*, 10th Dist. No. 11AP-1026, 2012-Ohio-2529, ¶ 10.

{¶ 8} Williams committed his offense in 2007 and Megan's Law applied at that time. Accordingly, when the court wrote that Williams had to be resentenced "under the law in effect at the time Williams committed the offense," it was clear that the law referred to was Megan's Law. Here, because King's offense occurred before Megan's Law was effective, he was not subject to any registration requirements at the time he committed his offense. See *State v. Galvan*, 2d Dist No. 97-CA-0008 (Dec. 31, 1997); former R.C. 2950.02 (registration requirements in R.C. Chapter 2950 effective before Megan's Law only applied to habitual sex offenders). Thus, the trial court's statement that King's registration requirements would be "governed by the law in effect at the time of his offense" is incorrect, because there were no such requirements. King's registration requirements arose after his offense, when Megan's Law was enacted and he was classified as a sexually oriented offender under that law. The retroactive application of Megan's Law to King was constitutionally permissible. *State v. Cook*, 83 Ohio St.3d 404, 423 (1998); *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, ¶43 (both cases concluding that Megan's Law was remedial and, therefore, could be applied retroactively). Thus, even though the requirements of the AWA do not apply to King, he must still comply with the requirements that apply to him as a result of the applicable version of Megan's Law.

{¶ 9} The State's assignment of error is sustained. Accordingly, we reverse the judgment of the Franklin County Court of Common Pleas and remand the matter for the trial court to reflect that King is subject to the registration requirements of the applicable version of Megan's Law.

Judgment reversed; cause remanded with instructions.

BRYANT and CONNOR, JJ., concur.
