

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 12AP-53
v.	:	(C.P.C. No. 11CR-2376)
	:	
Mark D. Lawson,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on March 7, 2013

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

Yeura R. Venters, Public Defender, and *Allen Adair*, for appellee.

ON APPLICATION FOR RECONSIDERATION
AND MOTION TO CERTIFY A CONFLICT

BRYANT, J.

{¶ 1} Defendant-appellee, Mark D. Lawson, filed motions requesting (1) leave to seek delayed reconsideration, (2) reconsideration, pursuant to App.R. 26(A), of our November 13, 2012 decision in *State v. Lawson*, 10th Dist. No. 12AP-53, 2012-Ohio-5250, and (3) certification pursuant to App.R. 25(A) and Ohio Constitution, Article IV, Section 3(B)(4) of an alleged conflict between our decision and those of three other appellate districts. Plaintiff-appellant, State of Ohio, filed a memorandum partially conceding and partially opposing the motion to certify a conflict, and a memorandum opposing delayed reconsideration.

A. *Leave to Seek Reconsideration*

{¶ 2} An application for reconsideration "shall be made in writing no later than ten days after the clerk has both mailed to the parties the judgment or order in question and made a note on the docket of the mailing as required by App. R. 30(A)." App.R. 26(A)(1)(a). App.R. 14(B), however, provides that "[f]or good cause shown, the court, upon motion, may enlarge or reduce the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of the prescribed time. * * * Enlargement of time to file an application for reconsideration or for en banc consideration pursuant to App. R. 26(A) shall not be granted except on a showing of extraordinary circumstances."

{¶ 3} In the underlying case, the state appealed from a judgment entry that sentenced defendant to a prison term of 30 months for failing to register under Ohio's sexual predator laws. The state's sole assignment of error asserted the trial court contravened the requirements of R.C. 2950.99, as modified by 2007 Am.Sub.S.B. No. 97 ("S.B. No. 97"), by failing to impose a mandatory three-year prison term. In response, defendant argued that the mandatory sentencing requirements imposed through S.B. No. 97 did not apply to him as a result of the Supreme Court of Ohio's decisions in *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, and subsequent cases.

{¶ 4} Our November 13, 2012 decision decided that, although defendant's reporting requirement arose from his conviction under Megan's Law, he was subject to the penalties in R.C. 2950.99, as amended by S.B. No. 97, because his reporting violation occurred after the enactment of S.B. No. 97. *Id.* at ¶ 11. As a result, we sustained the state's assignment of error and remanded to the trial court for resentencing.

{¶ 5} On December 6, 2012, the Supreme Court of Ohio released three opinions clarifying the application of 2007 Am.Sub.S.B. No. 10 ("S.B. No. 10") and S.B. No. 97 to offenders originally convicted under Megan's Law: *State v. Brunning*, Slip Opinion No. 2012-Ohio-5752, *In re Bruce S.*, Slip Opinion No. 2012-Ohio-5696, and *State v. Howard*, Slip Opinion No. 2012-Ohio-5738, *reconsideration denied*, 133 Ohio St.3d 1512, 2012-Ohio-6209. In *Brunning*, the Supreme Court held that offenders classified under Megan's Law alone may not be indicted for violating a reporting requirement more onerous than that set forth in Megan's Law, though they remain subject to a continuing duty to comply

with the requirements of Megan's Law. *Bodyke* at ¶ 18, 22. *In re Bruce S.* concluded that only offenders whose underlying crime occurred after January 1, 2008, the effective date of S.B. No. 10, are subject to the registration, classification and community-notification provisions of S.B. No. 10. *Id.* at ¶ 12. In *Howard*, the Supreme Court determined that, for offenders classified under Megan's Law, violations of Megan's Law reporting requirements are punishable only under former R.C. 2950.99 as amended by 2003 Am.Sub.S.B. No. 5. *Id.* at ¶ 21, 29.

{¶ 6} Because these opinions directly apply to our holding in *Lawson*, exceptional circumstances support defendant's January 17, 2013 motion seeking leave to file a delayed application for reconsideration, especially in view of his timely pending motion to certify a conflict. Accordingly, we grant defendant's motion for leave to file a delayed application for reconsideration. *See Lyttle v. Ohio*, 12th Dist. No. CA2010-04-089, 2012-Ohio-3042 (finding extraordinary circumstances two years after the original appellate judgment because of a subsequent Supreme Court of Ohio judgment invalidating appeal court's prior holding); *State v. Gandy*, 1st Dist. No. C-070152, 2010-Ohio-2873, ¶ 8.

B. Application for Reconsideration

{¶ 7} The test generally applied to an application for reconsideration is whether the application calls to the court's attention "an obvious error in its decision or raises an issue for our consideration that was either not considered at all or was not fully considered by us when it should have been." *Matthews v. Matthews*, 5 Ohio App.3d 140, 143 (10th Dist.1981). An application for reconsideration, however, "is not designed for use in instances where a party simply disagrees with the logic or conclusions of the court." *State v. Burke*, 10th Dist. No. 04AP-1234, 2006-Ohio-1026, ¶ 2, citing *State v. Owens*, 112 Ohio App.3d 334, 336 (11th Dist.1996).

{¶ 8} Defendant contends the court's ruling in *Howard* controls our analysis here, since he, like Howard, originally was classified under Megan's Law. Defendant thus asserts that, contrary to our decision, he is not subject to the mandatory prison sentence provided under current R.C. 2950.99, as amended by S.B. No. 97. The state admits defendant is a beneficiary of the *Howard* ruling, but contends on reconsideration that the holding of *Howard* is unconstitutional under a separation of powers analysis.

{¶ 9} The state's argument is unpersuasive. Initially, the state did not raise a separation of powers assignment of error or argument in briefing its issues on appeal, and we decline to address it on reconsideration. *State v. Lathan*, 6th Dist. No. L-03-1188, 2005-Ohio-321, ¶ 6 (noting that "[g]enerally, an appellate court does not consider additional assignments of error on reconsideration"); *Paillet v. Univ. of Cincinnati Hosp.*, 10th Dist. No. 82AP-952 (Aug. 4, 1983). Moreover, as an intermediate appellate court, we are bound to follow and apply the decisions of the Supreme Court of Ohio. *Gehad & Mandi, Inc. v. Ohio State Liquor Control Comm.*, 10th Dist. No. 05AP-1181, 2006-Ohio-3081, ¶ 7. Although the state questions *Howard*, the Supreme Court, when presented with the opportunity to reconsider its holding in *Howard*, declined to do so.

{¶ 10} Defendant, pursuant to *Howard*, is not subject to the mandatory prison sentence provided under current R.C. 2950.99, as amended by S.B. No. 97. Defendant's application for reconsideration thus raises an obvious error in our decision, and we grant his application for reconsideration, vacate our decision, and instead affirm the judgment of the trial court.

C. Motion to Certify a Conflict

{¶ 11} Our disposition of defendant's application for reconsideration renders moot his motion to certify a conflict.

D. Disposition

{¶ 12} In sum, we grant defendant's motion for leave to file a delayed application for reconsideration. Upon reconsideration, we vacate our November 13, 2012 decision, overrule the state's single assignment of error and affirm the judgment of the Franklin County Court of Common Pleas. Defendant's motion to certify a conflict is moot.

*Motion for leave to file a delayed
application for reconsideration granted;
application for reconsideration granted;
motion to certify a conflict rendered moot.*

TYACK and CONNOR, JJ., concur.
