

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellant/ Cross-Appellee,	:	
	:	No. 08AP-821
v.	:	(C.P.C. No. 00CR-02-875)
	:	
Rubin T. Toles,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee/ Cross-Appellant.	:	

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D E C I S I O N

Rendered on June 17, 2010

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

*Yeura R. Venters*, Public Defender, and *Paul Skendelas*, for  
appellee.

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APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} This is an appeal by plaintiff-appellant, state of Ohio, from a judgment of the Franklin County Court of Common Pleas, granting in part, and denying in part, a petition filed by defendant-appellee, Rubin T. Toles, to contest his reclassification under Senate Bill No. 10, ("S.B. 10"), Ohio's "Adam Walsh" law. Appellee has filed a cross-appeal.

{¶2} On February 16, 2000, appellee was indicted on one count of rape, in violation of R.C. 2907.02. On February 14, 2001, appellee entered a guilty plea to one count of rape without force, a felony of the first degree. The trial court conducted a sentencing hearing and, by judgment entry filed July 23, 2001, the court sentenced appellee to three years incarceration. The trial court also made a finding that appellee was a sexually oriented offender, and the court imposed post-control release.<sup>1</sup>

{¶3} In 2007, Ohio enacted S.B. 10, which amended portions of R.C. Chapter 2950 in order for the state to be in compliance with the Adam Walsh Act ("AWA") of 2006. The office of the Attorney General subsequently sent appellee notice informing him that he would be classified as a "Tier III offender" under the provisions of S.B. 10. On January 22, 2008, appellee filed a petition to contest reclassification and application of the AWA, seeking an adjudication of his status as a Tier III offender, and a determination that he not be subject to community notification pursuant to R.C. 2950.11. The state filed a memorandum in opposition to the petition.

{¶4} On June 20, 2008, the trial court conducted a hearing on the petition. On September 9, 2008, the trial court filed a decision and entry granting in part and denying in part appellee's petition to contest. Specifically, the trial court found that certain provisions of the AWA with respect to community notification and additional registration requirements were unconstitutional as to appellee and, thus, the court granted appellee's petition to that extent. The court upheld the provisions of the AWA insofar as the statute increased the frequency and duration of the registration requirements for Tier III offenders

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<sup>1</sup> Based upon his classification as a sexually oriented offender, appellee was not subject to community notification requirements under pre-S.B. 10.

who were formerly sexually oriented offenders. The court also rejected appellee's separation-of-powers challenge to the AWA.

{¶5} On appeal, the state sets forth the following three assignments of error for this court's review:

FIRST ASSIGNMENT OF ERROR

THE COMMON PLEAS COURT ERRED IN DETERMINING THAT ADDITIONAL REGISTRATION INFORMATION REQUIREMENTS IMPOSED BY SENATE BILL 10 AMOUNT TO UNCONSTITUTIONAL RETROACTIVE LEGISLATION THAT INFLICT PUNISHMENT.

SECOND ASSIGNMENT OF ERROR

THE COMMON PLEAS COURT ERRED IN DETERMINING THAT THE PROVISION REQUIRING TIER III OFFENDERS TO PROVIDE ADVANCE NOTICE OF INTENT TO MOVE AMOUNTS TO UNCONSTITUTIONAL RETROACTIVE LEGISLATION THAT INFLECTS PUNISHMENT.

THIRD ASSIGNMENT OF ERROR

THE COMMON PLEAS COURT ERRED IN DETERMINING THAT RELIEF FROM COMMUNITY NOTIFICATION UNDER R.C. 2950.11(F)(2) IS DETERMINED SOLELY BY THE SEX OFFENDER'S CLASSIFICATION UNDER PRIOR LAW.

{¶6} Appellee raises the following seven assignments of error in his cross-appeal:

FIRST ASSIGNMENT OF ERROR

The trial court erred in failing to find that retroactive application of all provisions of S.B. 10 violates the Retroactivity Clause contained in Article II, Section 28 of the Ohio Constitution.

### SECOND ASSIGNMENT OF ERROR

The trial court erred in failing to find that retroactive application of all provisions of S.B. 10 violates the Ex Post Facto Clause of Article I, Section 10 of the United States Constitution.

### THIRD ASSIGNMENT OF ERROR

The trial court erred in failing to find that S.B. 10 violates the separation of powers doctrine of the Ohio Constitution.

### FOURTH ASSIGNMENT OF ERROR

The trial court erred in failing to find that retroactive application of S.B. 10 violates the Double Jeopardy Clauses of the Fifth Amendment to United States Constitution and Article I, Section 10 of the Ohio Constitution.

### FIFTH ASSIGNMENT OF ERROR

The trial court erred in failing to find that the lifetime reporting and registration requirements imposed upon the Petitioner under S.B. 10 violate procedural due process rights under the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution as the Petitioner had previously been judicially determined not to be subject to lifetime reporting and registration requirements as he did not pose a substantial risk to reoffend or a risk of dangerousness.

### SIXTH ASSIGNMENT OF ERROR

The trial court erred in failing to find that S.B. 10's residency restrictions violate the Due Process Clause of the United States Constitution and Section 16, Article I of the Ohio Constitution.

### SEVENTH ASSIGNMENT OF ERROR

The trial court erred in failing to find that S.B. 10 violates Section 16, Article VIII of the Ohio Constitution as it invalidated the terms of a valid contract – the plea agreement – which involved a lesser classification, ten years of reporting, fewer restrictions on conduct, no residential restrictions, and substantially reduced impact on his life.

{¶7} Subsequent to oral argument, this court entered an order staying this appeal pending resolution by the Supreme Court of Ohio of the constitutionality of the reclassification provisions of S.B. 10. On June 3, 2010, the Ohio Supreme Court issued its decision in *State v. Bodyke*, \_\_\_\_\_ Ohio St.3d \_\_\_\_\_, 2010-Ohio-2424 (slip opinion), holding in paragraph three of the syllabus: "R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders whose classifications have already been adjudicated by a court and made the subject of a final order, violate the separation-of-powers doctrine by requiring the opening of final judgments." The Supreme Court concluded that severance of those two statutory provisions was the appropriate remedy, and, thus, the court held: "R.C. 2950.031 and 2950.032 may not be applied to offenders previously adjudicated by judges under Megan's Law, and the classifications and community-notification and registration orders imposed previously by judges are reinstated." *Id.* at ¶66.

{¶8} In accordance with the Supreme Court's pronouncement in *Bodyke*, this court sustains appellee's third assignment of error on cross-appeal (asserting that the trial court erred in failing to find that S.B. 10 violates the separation-of-powers doctrine). Appellee's remaining assignments of error, raising various other constitutional challenges to his reclassification under S.B. 10, are rendered moot. Similarly, the state's three assignments of error, challenging the trial court's determinations as to community notification and registration and notice requirements under S.B. 10 with respect to Tier III offenders, are rendered moot in light of the holding in *Bodyke*.

{¶9} Based upon the foregoing, and having sustained appellee's third assignment of error on cross-appeal, the judgment of the Franklin County Court of Common Pleas is reversed, appellee's previous classification, community-notification, and registration orders are reinstated, pursuant to *Bodyke*, and this matter is remanded to that court for further proceedings in accordance with law and consistent with this decision.

*Judgment reversed and cause remanded.*

BRYANT and CONNOR, JJ., concur.

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