

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 09AP-220
Plaintiff-Appellee,	:	(C.P.C. No. 02CR-06-3600)
v.	:	
	:	(REGULAR CALENDAR)
Daniel W. Heath,	:	
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 29, 2010

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

Dennis Pusateri, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

McGRATH, J.

{¶1} This is an appeal by defendant-appellant, Daniel W. Heath ("appellant"), from a judgment of the Franklin County Court of Common Pleas, denying appellant's petition to contest reclassification.

{¶2} On October 22, 2002, appellant entered a guilty plea to one count of illegal use of a minor in nudity-oriented material or performance in violation of R.C. 2907.323, a felony of the fifth degree. By entry filed in December 2002, the trial court imposed a period of community control under intensive supervision sexual offender caseload for two years. Further, the trial court classified appellant as a sexually oriented offender pursuant

to R.C. 2950.01, as a result of which appellant was subject to the requisite registration requirements for ten years.

{¶3} In December 2007, appellant received notice from the office of the Ohio Attorney General that he would be designated a "Tier I offender" under the provisions of Senate Bill No. 10 ("S.B. 10"), Ohio's version of the Adam Walsh Act ("AWA"), which amended provisions of R.C. Chapter 2950. On January 18, 2008, appellant filed a petition to contest reclassification under S.B. 10, asserting various constitutional challenges to the newly enacted provisions of the AWA, including a separation of powers challenge. The state filed a memorandum contra appellant's petition. The trial court conducted a hearing on January 20, 2009. On February 3, 2009, the trial court issued a decision and entry denying appellant's petition to contest reclassification.

{¶4} Appellant filed a notice of appeal, raising the following assignment of error for this court's review:

THE TRIAL COURT ERRED BY DENYING APPELLANT'S
PETITION TO CONTEST RECLASSIFICATION.

{¶5} On June 3, 2010, the Supreme Court of Ohio 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.

{¶6} In accordance with the Supreme Court's pronouncement in *Bodyke*, this court sustains appellant's assignment of error. See also *State v. Toles*, 10th Dist. No. 08AP-821, 2010-Ohio-2772; *State v. Bernthold*, 10th Dist. No. 09AP-642, 2010-Ohio-2775.

{¶7} Based upon the foregoing, appellant's sole assignment of error is sustained, and the judgment of the Franklin County Court of Common Pleas is reversed. Appellant'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 with instructions.*

BRYANT and BROWN, JJ., concur.
