

[Cite as *State v. Watkins*, 2010-Ohio-4187.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee/ Cross-Appellant,	:	
	:	
v.	:	No. 09AP-669 (C.P.C. No. 94CR-541)
	:	
Rufus N. Watkins,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant/ Cross-Appellee.	:	

D E C I S I O N

Rendered on September 7, 2010

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

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

APPEAL from the Franklin County Court of Common Pleas.

PER CURIAM.

{¶1} Defendant-appellant, Rufus N. Watkins, appeals from a judgment of the Franklin County Court of Common Pleas denying his petition to contest reclassification pursuant to Ohio's Adam Walsh Act ("the AWA"). The state cross-appeals from the same judgment sustaining defendant's challenge to the residency restrictions contained in R.C. 2950.034. We reverse the trial court's reclassification decision on the basis of *State v.*

Bodyke, ___ Ohio St.3d ___, 2010-Ohio-2424, and we dismiss the state's cross-appeal on the authority of *Chojnacki v. Cordray*, ___ Ohio St.3d ___, 2010-Ohio-3212.

{¶2} In 1994, the state indicted defendant on related counts of rape in violation of R.C. 2907.02, kidnapping in violation of R.C. 2905.01, and corruption of a minor in violation of R.C. 2907.04. On July 15, 1994, defendant entered a guilty plea to the corruption of a minor charge and received an indefinite sentence of three to ten years. In February 2004, defendant was released from prison, having served nine years, eight months of his sentence.

{¶3} Between the date defendant's incarceration began and the date of his release, the Ohio General Assembly in 1996 adopted Ohio's version of Megan's Law, enacted it in R.C. Chapter 2950 and repealed prior versions of that chapter of the code. Pursuant to the new law, the trial court on June 12, 2001, conducted a sex offender classification hearing in order to classify defendant under the provisions of Megan's Law. At the hearing, the trial court determined defendant was not a sexual predator, meaning defendant was classified as a sexually oriented offender. The classification subjected defendant to ten years of registration upon completion of his sentence. Effective July 31, 2003, the General Assembly adopted former R.C. 2950.031, also known as S.B. No. 5. The S.B. No. 5 amendments to Megan's Law prohibited sexually oriented offenders and child-victim oriented offenders from living within 1,000 feet of a school.

{¶4} The General Assembly subsequently enacted Ohio's version of the AWA, also known as S.B 10, which was effective January 1, 2008. The newly enacted version of R.C. Chapter 2950 replaced the classification system of Megan's Law with a tier system consisting of three tiers, the crime for which a defendant was convicted

determining the applicable tier. In addition to expanding the school residency restriction to include preschools and daycare facilities, the AWA placed on the attorney general the responsibility for reclassifying to a tier under the AWA those defendants originally classified under Megan's Law. Defendant received notice he would be reclassified as a Tier II offender because corruption of a minor, now termed unlawful sexual conduct with a minor, is a Tier II offense when the offender is four or more years older than the victim. The AWA requires a Tier II offender to register for 25 years and periodically verify residence or place of employment every 180 days. R.C. 2950.07; R.C. 2950.06(B)(2).

{¶5} On January 28, 2008, defendant filed a "Petition to Contest Reclassification and Application of ¶¶2950.01, et seq." In it, defendant also asked the court to declare whether the residency restriction of the AWA applied to him. The state responded on February 11, 2008 with a memorandum opposing the petition, arguing the trial court had authority under R.C. 2950.031(E) to address only reclassification and registration under the AWA and not the residency restriction. At a February 26, 2009 hearing, the trial court heard both aspects of defendant's petition and, in a decision and entry filed June 16, 2009, rejected defendant's contention that the AWA provisions authorizing his reclassification were unconstitutional. The court, however, sustained defendant's challenge to the residency restriction.

{¶6} Defendant timely appealed from the trial court's judgment denying his petition to contest reclassification, and the state timely cross-appealed from the trial court's judgment sustaining defendant's challenge to the residency restriction.

{¶7} Defendant assigns the following errors:

First Assignment of Error: Retroactive application of the provisions of Senate Bill 10 to those convicted of offenses

committed before its January 1, 2008 effective date violates the ban on ex post facto lawmaking by the states set forth in Article I, Section 10 of the United States Constitution.

Second Assignment of Error: Application of the provisions of Senate Bill 10 to those convicted of offenses committed before its January 1, 2008 effective date violates the ban on retroactive laws set forth in Article II, Section 28, of the Ohio Constitution.

Third Assignment of Error: Application of Senate Bill 10's tier system of classification to offenders who were judicially classified under former versions of Chapter 2950 violates the Separation of Powers Doctrine.

Fourth Assignment of Error: Retroactive application of S.B. 10 violates the Double Jeopardy Clauses of the United States Constitution's Fifth Amendment and Article I, Section 10 of the Ohio Constitution.

Fifth Assignment of Error: Senate Bill 10 as applied to appellant constitutes cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.

Sixth Assignment of Error: Retroactive application of S.B. 10 to offenders who entered guilty or no contest pleas pursuant to a plea agreement with the state prior to the act's effective date impairs the obligation of contracts as protected by the Ohio and United States Constitutions.

The state on cross-appeal assigns a single error:

THE COMMON PLEAS COURT ERRED IN RULING ON THE APPLICABILITY OF THE 1,000-FOOT RESIDENCY RESTRICTION IN R.C. 2950.034, AS SUCH RESTRICTION WAS NOT A "NEW REGISTRATION REQUIREMENT" THAT COULD BE CHALLENGED IN DEFENDANT'S PETITION CONTESTING RECLASSIFICATION UNDER R.C. 2950.031(E).

Together, defendant's assignments of error assert certain portions of the AWA are unconstitutional. Because disposition of defendant's third assignment of error resolves his

appeal, we first address it. We then address the state's sole assignment of error on cross-appeal.

{¶8} Defendant's third assignment of error asserts the trial court erred in denying his petition to contest reclassification because application of the AWA's tier system of classification to offenders who were judicially classified under former versions of R.C. Chapter 2950 is unconstitutional. Defendant argues that because the AWA gives the Attorney General of Ohio the power to reclassify convicted sex offenders who earlier were judicially classified, the AWA violates the separation of powers doctrine by allowing the executive branch to encroach on the powers of the judicial branch.

{¶9} Statutes enjoy a strong presumption of constitutionality, and a party seeking to have a statute declared unconstitutional must prove its unconstitutionality beyond a reasonable doubt. *In re Brayden James*, 113 Ohio St.3d 420, 2007-Ohio-2335, ¶13; *State v. Anderson* (1991), 57 Ohio St.3d 168, 171. An appellate court's review of the constitutionality of a statute is de novo. See *State v. Cook* (1998), 83 Ohio St.3d 404.

{¶10} R.C. 2950.031 and 2950.032 are the portions of the AWA involving reclassification of offenders previously judicially classified under former versions of Ohio's sex offender registration laws. R.C. 2950.031 sets out the framework for the attorney general to reclassify offenders having a registered address, while R.C. 2950.032 allows the attorney general to reclassify offenders serving a prison term. Both sections provide "[t]he attorney general shall make the determinations" of whether the offender should be classified as a Tier I, Tier II, or Tier III offender under the AWA. R.C. 2950.031(A)(3); R.C. 2950.032(A)(3).

{¶11} After the trial court denied defendant's petition to contest reclassification and defendant appealed, the Supreme Court of Ohio issued its decision in *Bodyke*. In considering a challenge to the constitutionality of the AWA, *Bodyke* concluded "R.C. 2950.031 and 2950.032, the reclassification provisions in the AWA, are unconstitutional because they violate the separation-of-powers doctrine." *Id.* at ¶2.

{¶12} As part of its decision, the Supreme Court reiterated the history of Ohio's sex offender registration laws, emphasizing the importance of separation of powers and noting the court has "held that '[t]he administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers.'" *Id.* at ¶45, quoting *State ex rel. Johnston v. Taulbee* (1981), 66 Ohio St.2d 417, paragraph one of the syllabus. In that context, the Supreme Court concluded the portions of the AWA governing reclassification of sex offenders already judicially classified under Megan's Law violate the separation of powers doctrine for two reasons: (1) "the reclassification scheme vests the executive branch with authority to review judicial decisions," and (2) "it interferes with the judicial power by requiring the reopening of final judgments." *Id.* at ¶55. Having concluded R.C. 2950.031 and 2950.032 are unconstitutional, the Supreme Court chose severance as the proper remedy. *Id.* at ¶66. The court thus held "that R.C. 2950.031 and 2950.032 are severed and, that after severance, they may not be enforced. R.C. 2950.031 and 2950.032 may not be applied to offenders previously adjudicated by judges under Megan's Law." *Id.* The Supreme Court ordered "the classifications and community-notification and registration orders imposed previously by judges are reinstated." *Id.*

{¶13} As defendant was no longer in prison at the time he received notification of his reclassification under the AWA, the attorney general used R.C. 2950.031 to reclassify defendant. Based on the Supreme Court's decision in *Bodyke* holding R.C. 2950.031 and 2950.032 are unconstitutional, severed, and may not be enforced. Defendant's third assignment of error is sustained. Our disposition of defendant's third assignment of error renders moot his first, second, fourth, fifth, and sixth assignments of error.

{¶14} In its cross-appeal, the state does not challenge the trial court's declaration that the residency restriction set forth in R.C. 2950.034 cannot be applied to defendant. Instead, the state only argues defendant's challenge to the residency restriction could not be brought in the same proceeding as defendant's R.C. 2950.031 petition challenging his reclassification. Premising its argument on the statutory language in R.C. 2950.031 that addresses only challenges to "new registration requirements," the state points out the residency restriction is not such a requirement.

{¶15} In *Bodyke*, the Supreme Court held the attorney general's reclassification of a sexual offender whom a trial court order previously had classified under prior law violated the separation of powers doctrine. As part of its conclusion, the court severed R.C. 2950.031 and 2950.032, and held that those provisions no longer could be enforced. *Bodyke* at ¶66.

{¶16} More recently, the court clarified the effect of the severance remedy in *Chojnacki*, which involved an offender whom the trial court had classified as a sexually oriented offender. The offender subsequently filed a petition challenging his reclassification by the attorney general, along with a request for appointment of counsel for purposes of the hearing on his petition. The Twelfth District Court of Appeals held that

the order denying his request for appointed counsel was not a final appealable order and dismissed the appeal. On a certified conflict, the Supreme Court considered whether the order denying appointment of counsel constituted a final appealable order.

{¶17} The Supreme Court, however, dismissed the appeal as moot based on its earlier *Bodyke* decision that severed the statutory provisions governing petitions challenging reclassification. In so concluding, the court stated "[t]he reclassification hearing which has resulted in this appeal and the related certified question arose under the now-severed provisions of R.C. 2950.031 and 2950.032. Accordingly, these causes no longer present a justiciable case or controversy, and as a result, the appeal is dismissed as moot and the certified conflict is dismissed because a conflict no longer exists." *Chojnacki* at ¶6.

{¶18} In this case, the only issue the state raises in its cross-appeal arose from R.C. 2950.031, because the only issue the state argued is whether R.C. 2950.031 limits a court's consideration of a petition filed, pursuant to that statute, to the matters enumerated in the statute, thus making the trial court's declaration on a matter not set forth in R.C. 2950.031 an improper exercise of the court's jurisdiction. However, with the severance of R.C. 2950.031, no petition process exists, and any error regarding the court's exercise of jurisdiction within that petition process is moot.

{¶19} Accordingly, the state's assignment of error on cross-appeal is dismissed as moot.

{¶20} Having sustained defendant's third assignment of error pursuant to the decision of the Supreme Court of Ohio in *Bodyke*, rendering moot defendant's five other assignments of error, and having dismissed the state's assignment of error on cross-

appeal as moot, we affirm in part and reverse in part the decision of the Franklin County Court of Common Pleas, and dismiss the state's cross-appeal.

*Judgment affirmed in part
and reversed in part;
cross-appeal dismissed.*

BRYANT, SADLER and McGRATH, JJ., concur.
