

[Cite as *Rutan v. State*, 2010-Ohio-3141.]

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
MADISON COUNTY

ROGER RUTAN,	:	
	:	CASE NO. CA2009-12-025
Petitioner-Appellant,	:	
	:	<u>OPINION</u>
- vs -	:	7/6/2010
	:	
STATE OF OHIO,	:	
	:	
Respondent-Appellee.	:	

CIVIL APPEAL FROM MADISON COUNTY COURT OF COMMON PLEAS
Case No. 2008CV-02-117

Roger Rutan, #A346009, London Correctional Institution, P.O. Box 69, London, Ohio 43140, petitioner-appellant, pro se

Stephen J. Pronai, Madison County Prosecuting Attorney, Eamon Costello, 59 North Main Street, London, Ohio 43140, for respondent-appellee

POWELL, J.

{¶1} Petitioner-appellant, Roger Rutan, appeals pro se from the Madison County Court of Common Pleas decision overruling his petition challenging his sex offender reclassification. For the reasons outlined below, we reverse.

{¶2} On December 13, 1996, a Franklin County jury found appellant guilty of nine counts of gross sexual imposition, eight counts of contributing to the unruliness

or delinquency of a child, three counts of corrupting another with drugs, two counts of felonious sexual penetration, and two counts of kidnapping.¹ After holding a sentencing hearing, the Franklin County Court of Common Pleas sentenced appellant and classified him as a sexual predator under Ohio's Megan's Law pursuant to the then existing R.C. Chapter 2950.²

{¶3} In December 2007, while serving his sentence in the London Correctional Institution located in Madison County, appellant received written notice from the Ohio Attorney General informing him that he had been reclassified from a sexual predator to a Tier III sex offender pursuant to Senate Bill 10, also known as Ohio's Adam Walsh Act, which amended provisions of R.C. Chapter 2950. Shortly thereafter, appellant filed a petition challenging his reclassification in the Madison County Court of Common Pleas, which the court subsequently denied. Appellant now appeals, arguing that his reclassification was unconstitutional.

{¶4} As recently decided by the Supreme Court of Ohio in *State v. Bodyke*, Slip Opinion No. 2010-Ohio-2424, Ohio's Adam Walsh Act's "provisions governing the reclassification of sex offenders already classified by judges under Megan's Law violate[s] the separation-of-powers doctrine * * *." *Id.* at ¶55, paragraph two and three of the syllabus. As a result of this holding, the supreme court struck the offending statutory language, rendered the reclassification of sex offenders by the attorney general invalid, and "reinstate[d] the prior judicial classifications of sex offenders." *Id.* at ¶2, ¶66.

1. Appellant's conviction, less one count of gross sexual imposition, was affirmed by the Tenth District Court of Appeals in *State v. Rutan* (Dec. 16, 1997), Franklin App. No. 97AP-389, 1997 WL 781902.

2. As a sexual predator, appellant was required to register with the county sheriff every 90 days for life and was subject to community notification. See *State v. Bodyke*, Slip Opinion No. 2010-Ohio-2424, ¶26; see, also, former R.C. 2950.06(B)(1), R.C. 2950.07(B)(1), and R.C. 2950.11(A).

{¶15} After a thorough review of the record, and in light of the Ohio Supreme Court's pronouncement in *Bodyke*, we find the trial court erred in its decision overruling appellant's petition challenging his sex offender reclassification. *Id.* at paragraph two and three of the syllabus. In addition, because the Ohio Supreme Court "reinstate[d] the prior judicial classifications of sex offenders," we find remanding this cause unnecessary as appellant's prior judicial classification as a sexual predator pursuant to Ohio's Megan's Law has already been reinstated. *Id.* at ¶2, ¶¶66. Accordingly, appellant's assignments of error are sustained.

{¶16} Judgment reversed.

YOUNG, P.J., and RINGLAND, J., concur.