

[Cite as *State v. Gordon*, 2010-Ohio-3015.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-641 (C.P.C. No. 08MS-187)
Matthew Gordon,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 30, 2010

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

Tyack, Blackmore & Liston Co., L.P.A., and *Thomas M. Tyack*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

McGRATH, J.

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

{¶2} In April 2004, appellant entered a guilty plea to attempted sexual battery and sexual battery and was sentenced to a prison term to be followed by a period of community control. As a sexually oriented offender, appellant was subject to the requisite registration requirements for ten years. Appellant was not, however, subject to community notification.

{¶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 30, 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 February 19, 2009. On June 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, ITS DECISION VIOLATED THE DEFENDANT'S CONSTITUTIONAL RIGHTS BY THE FOLLOWING:

1. Adam Walsh constituting an *ex post facto* law, is proscribed by Article I, Section X of the United States Constitution.
2. The retroactive application of the Ohio Adam Walsh Act violates prohibition on retroactive laws in Article II, Section 28 of the Ohio Constitution.
3. The reclassification of the Petitioner constitutes a violation of the Separation of Powers Doctrine.
4. The reclassification constitutes impermissible multiple punishments under the Double Jeopardy Clause of the Constitution of the United States and the Ohio Constitutions.
5. The residency restrictions violate the Defendant's right to due process.

{¶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 with respect to his contention that S.B. 10 violates the separation-of-powers doctrine; the remaining arguments raised under appellant's assignment of error are rendered moot. 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 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 SADLER, JJ., concur.
