

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Robert E. Snyder, Sr., :
 :
 Petitioner-Appellee, :
 :
 v. : No. 11AP-1026
 : (C.P.C. No. 08 MS-148)
 State of Ohio, : (REGULAR CALENDAR)
 :
 Respondent-Appellant. :

D E C I S I O N

Rendered on June 7, 2012

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

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

APPEAL from the Franklin County Court of Common Pleas

BRYANT, J.

{¶ 1} Respondent-appellant, state of Ohio, appeals from a judgment of the Franklin County Court of Common Pleas granting the petition to contest reclassification of petitioner-appellee, Robert E. Snyder, Sr. Having withdrawn its second assignment of error, the state assigns a single error:

THE COMMON PLEAS COURT ERRED IN DETERMINING THAT PETITIONER'S REGISTRATION REQUIREMENTS "WILL BE GOVERNED BY THE LAW IN EFFECT IN 1995, THE DATE OF HIS CONVICTION", AS OHIO'S R.C. CHAPTER 2950 IN ITS MOST RECENT MEGAN'S LAW

**VERSION SETS FORTH THE APPLICABLE REGISTRATION
REQUIREMENTS.**

Because the language in the trial court's judgment entry conflicts with pertinent law, we reverse.

I. Facts and Procedural History

{¶ 2} Ohio's sex offender laws underlie the issues here and determine the relevant facts. The statutory scheme that classified and registered sex offenders, commonly referred to as Ohio's version of the federal Megan's Law, 42 U.S.C. 14071, was enacted in 1996 as part of Am.Sub.H.B. No. 180, 146 Ohio Laws, Part II, 2560, and was "significantly amended in 2003 by Am.Sub.S.B. No. 5 * * *, 150 Ohio Laws, Part IV, 6558." *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, ¶ 7.

{¶ 3} In 2006, Congress passed the Adam Walsh Child Protection and Safety Act ("AWA"), codified at 42 U.S.C. 16901 et seq., creating national standards for sexual offender classification, registration, and community notification. The next year, Ohio enacted its version of the AWA, also known as Am.Sub.S.B. No. 10, to be effective January 1, 2008. The AWA repealed the sexual offender registration scheme under Megan's Law, a three-level plan utilizing the terms "sexually oriented offender," "habitual sexual offender," and "sexual predator." It replaced Megan's Law with a new three-tiered system, "Tier I," "Tier II," and "Tier III."

{¶ 4} Few facts are known with certainty concerning petitioner's conviction and sentence, but the facts necessary to resolve the state's assignment of error may be gleaned from the record. According to petitioner's petition, he was convicted of rape in violation of R.C. 2907.02 pursuant to a judgment entered in the Licking County Court of Common Pleas in February 1995. Although the state's response to petitioner's petition initially contended petitioner was classified a sexual predator as a result of his conviction in Licking County, the docket search the state filed indicates that as of May 5, 1998, the Licking County Court of Common Pleas continued the determination regarding petitioner's sex offender status until the Supreme Court of Ohio ruled on the constitutionality of Megan's Law and its retroactive application to persons, like petitioner, who were convicted prior to its enactment.

{¶ 5} In *State v. Cook*, 83 Ohio St.3d 404 (1998), the Supreme Court of Ohio upheld the retroactive application of Megan's Law to sex offenders like petitioner, but no further proceedings in the Licking County Court of Common Pleas are evident from the docket search the state filed. The docket search does not disclose whether petitioner completed his sentence arising from the Licking County case; nor does the record reveal whether he completed his responsibilities under Megan's Law.

{¶ 6} Petitioner, however, "became aware of his new classification as a Tier III Sex Offender, pursuant to the Adam Walsh Child Protection and Safety Act of 2006, § § 2950.01, et seq. * * * and the requirement that he register personally with the local sheriff's office every ninety (90) days for life," prompting his petition to challenge his reclassification. (Petition, ¶ 4.) Petitioner further alleged that, according to the notice of new classification and accompanying registration duties, he also would be subject to community notification responsibilities under R.C. 2950.11. Petitioner asserted retroactively applying the AWA to him violated the Ohio and United States Constitutions. In addition to contesting his reclassification, petitioner sought to stay enforcement of his community notification obligations under the new classification under the AWA. The court granted petitioner's stay on January 31, 2008.

{¶ 7} While the petition was pending, the Supreme Court's decision in *Williams* determined the AWA could not be applied to persons like petitioner who were convicted before it was enacted. With that decision, the trial court on October 26, 2011, filed its "Decision and Entry Vacating Petitioner's Adam Walsh Act Classification and Reinstating Petitioner's Classifications under Megan's Law." In the body of its decision and entry, the court noted petitioner's conviction of a sex offense in Licking County in 1995 and cited to *Williams'* holding that rendered unconstitutional petitioner's reclassification under the AWA. With that premise, the court concluded "Petitioner-Defendant[']s registration requirements will be governed by the law in effect in 1995, the date of his conviction."

II. Assignment of Error—Status Under Sex Offender Laws

{¶ 8} The state's single assignment of error asserts the trial court erred in stating the law in effect in 1995, the date of petitioner's conviction, governs petitioner's registration requirements. Rather, the state contends, petitioner's registration

requirements are those set forth in Ohio's version of Megan's Law, applied retroactively to the date of petitioner's conviction in Licking County.

{¶ 9} In *Williams*, the Supreme Court agreed that the additional reporting and registration requirements of the AWA did not apply retroactively to those whose convictions pre-dated the effective date of the statute. In stating the effect of its decision, the *Williams* court reversed the judgment of the court of appeals and remanded for "resentencing under the law in effect at the time Williams committed the offense." *Id.* at ¶ 23. Apparently employing the language from *Williams*, the trial court here determined petitioner's registration requirements would be governed by the law in effect at the date of his conviction.

{¶ 10} A significant difference in the two cases requires a different result. At the time Williams committed his offense in 2007, Ohio's version of Megan's Law was effective and applied to him. Accordingly, at the time his reclassification was vacated, he returned to the requirements under Megan's Law. By contrast, petitioner here was convicted before Megan's Law was effective. Although offenders challenged as unconstitutional the courts' retroactively applying Megan's Law, the Supreme Court in *Cook* upheld its retroactive application. Accordingly, as petitioner's brief on appeal acknowledges, petitioner, even if never found to be a sexual predator, was a sexually oriented offender by operation of law pursuant to the provisions of Megan's Law and subject to its requirements.

{¶ 11} Petitioner aptly summarizes the appropriate resolution stating that "[a]ccording to State v. Bodyke, 126 Ohio St.3d 266, 2010-Ohio-2424 and State v. Williams, 129 Ohio St.3d 344, 2011-Ohio-3374, [petitioner's] obligations were restored to what they had been under Megan's Law" until completed. (Appellee's brief, 5-6.) Indeed, such a conclusion is consistent with the heading of the trial court's decision entitled "Decision and Entry Vacating Petitioner's Adam Walsh Act Classification and Reinstating Petitioner's Classifications Under Megan's Law." (Appellee's brief, 6.) As petitioner acknowledges, if he in fact has any remaining obligation under Megan's Law, "it would have to be honored." (Appellee's brief, 6.)

{¶ 12} As a result, whether petitioner has continuing obligation to register under Megan's Law depends on the date of his release, an unknown fact on this record. In any event, when petitioner's reclassification was vacated, he became subject, as he

acknowledges, to the requirements of Megan's Law and, if petitioner has not completed his obligations under Megan's Law, he will need to honor those responsibilities for their duration.

III. Disposition

{¶ 13} Accordingly, we reverse the judgment of the trial court to the limited extent of remanding this matter to allow the court to reconcile the caption of its entry into the body and reflect that, on the court's vacating petitioner's reclassification under the AWA, he became subject to the requirements of Ohio's most recent version of Megan's Law.

*Judgment reversed and
cause remanded with instructions.*

KLATT and CONNOR, JJ., concur.
