

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

RICHARD AGEE,	:	APPEAL NO. C-100062
	:	TRIAL NO. SP-0900067
Petitioner-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
STATE OF OHIO,	:	
	:	
Respondent-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

In 2003, petitioner-appellant Richard Agee pleaded guilty to and was convicted of sexual battery. On March 24, 2003, the trial court entered an order adjudicating Agee a sexually oriented offender under former R.C. Chapter 2950 (“Megan’s Law”). Under Megan’s Law, Agee was required to annually register as a sexual offender for ten years.

Agee received a notice from the Ohio Attorney General stating that he had been reclassified under Am.Sub.S.B. No. 10 (“Senate Bill 10”) as a Tier III sex offender and that he was required to register with the local sheriff every 90 days for life. Agee filed an R.C. 2950.031(E) petition to contest his reclassification, challenging the constitutionality of Senate Bill 10. He also filed an R.C. 2950.11(F)(2) motion for relief from the community-notification provisions, which the trial court granted. After a

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

hearing, the trial court overruled Agee's constitutional challenges to Senate Bill 10 and denied his R.C. 2950.031(E) petition.

Agee raises six assignments of error for our review. Agee's third assignment of error alleges that Senate Bill 10's requirement that the Ohio Attorney General reclassify him violates the separation-of-powers doctrine inherent in Ohio's Constitution. The prosecutor has filed a "motion to submit on the authority of *State v. Bodyke*." We hereby grant the prosecutor's motion.

In *State v. Bodyke*,² the Ohio Supreme Court held that "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 reopening of final judgments."³ Further, the court held that the statutes violate the separation-of-powers doctrine because they "impermissibly instruct the executive branch to review past decisions of the judicial branch."⁴ The court severed the statutory provisions, holding that "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."⁵

On March 24, 2003, the trial court entered an order adjudicating Agee a sexually oriented offender under Megan's Law. In accordance with *Bodyke*, Agee's third assignment of error is sustained. Agee's remaining assignments of error are made moot by our disposition of his third assignment of error.

² 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753.

³ See *id.* at paragraph three of the syllabus.

⁴ See *id.* at paragraph two of the syllabus.

⁵ See *id.* at ¶66.

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The judgment of the trial court is reversed, and pursuant to *Bodyke*, Agee's previous classification, community-notification, and registration orders are reinstated.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., SUNDERMANN and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 12, 2010
per order of the Court _____.
Presiding Judge