

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

ROBERT TUCKER,	:	APPEAL NO. C-100255
	:	TRIAL NO. SP-0900074
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 2005, petitioner-appellant Robert Tucker pleaded guilty to and was convicted of two counts of rape. He was sentenced to three years' incarceration. On August 22, 2005, the trial court entered an order adjudicating Tucker a sexually oriented offender under former R.C. Chapter 2950 ("Megan's Law"). Under Megan's Law, upon his release from incarceration Tucker was required to annually register as a sexual offender for ten years.

Tucker 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. Tucker 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

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

from the community-notification provisions, which the trial court granted. After a hearing, the trial court overruled Tucker's constitutional challenges to Senate Bill 10 and denied his R.C. 2950.031(E) petition.

Tucker has appealed the trial court's judgment. The parties have filed a "joint motion to submit on the authority of *State v. Bodyke*." We hereby grant the parties' 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 August 22, 2005, the trial court entered an order adjudicating Tucker a sexually oriented offender under Megan's Law. Pursuant to *Bodyke*, Tucker may not be reclassified under Senate Bill 10.

The judgment of the trial court is reversed, and in accordance with *Bodyke*, Tucker's previous classification, community-notification, and registration orders are reinstated.

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 ¶166.

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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.

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

To the Clerk:

Enter upon the Journal of the Court on March 9, 2011
per order of the Court _____.
Presiding Judge