

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

ANTHONY WATERS,	:	APPEAL NO. C-100382
	:	TRIAL NO. SP-1000015
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.<sup>1</sup>

In Clermont County, Ohio, in 2002, petitioner-appellant Anthony Waters pleaded guilty to and was convicted of three counts of unlawful sexual conduct with a minor. On November 19, 2002, the trial court entered an order adjudicating Waters a sexually oriented offender under former R.C. Chapter 2950 (“Megan’s Law”). Under Megan’s Law, Waters was required to annually register as a sexual offender for ten years.

Waters was reclassified by the Ohio Attorney General under Am.Sub.S.B. No. 10 (“Senate Bill 10”) as a Tier II sex offender, which required him to register with the local sheriff every 180 days for 25 years. Waters filed an R.C. 2950.031(E) petition to contest his reclassification, challenging the constitutionality of Senate Bill 10. After a hearing, the trial court overruled Waters’s constitutional challenges to Senate Bill 10 and denied

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

his R.C. 2950.031(E) petition. But the court determined that Waters had been incorrectly classified as a Tier II offender, and so it classified Waters as a Tier I sex offender under Senate Bill 10, requiring him to annually register for 15 years.

Waters raises eight assignments of error for our review. Waters's third assignment of error alleges that his reclassification under Senate Bill 10 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*,<sup>2</sup> 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."<sup>3</sup> 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."<sup>4</sup> 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."<sup>5</sup>

On November 19, 2002, the trial court entered an order adjudicating Waters a sexually oriented offender under Megan's Law. In accordance with *Bodyke*, Waters's third assignment of error is sustained. Waters's remaining assignments of error are made moot by our disposition of his third assignment of error.

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

<sup>3</sup> See *id.* at paragraph three of the syllabus.

<sup>4</sup> See *id.* at paragraph two of the syllabus.

<sup>5</sup> See *id.* at ¶166.

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The judgment of the trial court is reversed, and pursuant to *Bodyke*, Waters'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.

**DINKELACKER, P.J., SUNDERMANN and HENDON, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on May 20, 2011  
per order of the Court \_\_\_\_\_.  
Presiding Judge