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COURT OF COMMON PLEAS

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GREGORY A. BRUSH
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IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO,

CASE NO.: 2002 CR 04586

Plaintiff(s),

JUDGE FRANCES E. MCGEE

-vs-

GREGORY STUART KENDALL,

**DECISION, ORDER AND ENTRY
SUSTAINING DEFENDANT'S MOTION
DECLARING THE REGISTRATION
REQUIREMENT VOID AB INITIO**

Defendant(s).

Defendant Gregory Stuart Kendell filed a Motion Declaring the Registration Requirement Void Ab Initio and in the alternative a Motion to Withdraw Guilty Pleas. There has been no response to either Motion from the State. This matter is properly before the Court.

I. Facts

On August 19, 2003, Defendant plead guilty to the two charges in the Indictment; 1) illegal use of a minor in nudity oriented material or performance in violation of ORC 2907.323(a)(3) and 2) possession of criminal tools. On November 4, 2003, Defendant was sentenced to community control sanctions. While he was designated as a sexually oriented offender he was not required to register in Ohio. On July 9, 2004, Defendant was found in violation of his community control sanctions and sentenced to eleven months incarceration. Upon his release, Defendant moved to North Carolina. His supervision was transferred to North Carolina. In North Carolina, Defendant was required to register as a sex offender for the first time.

II. Law and Analysis

Chapter 2950 of the Ohio Revised Code was amended on June 30, 2007 and altered the classification scheme for sex offenders in Ohio as well as the related address registration, community notification and residency restriction requirements. Defendant plead guilty for a

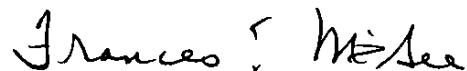
Montgomery County Common Pleas Court
General Division

violation of O.R.C. 2907.323(A)(3). When Defendant plead guilty a violation of O.R.C. 2907.323 (A)(3) was not a sexually oriented offense. The amended O.R.C. 2950.01 added O.R.C. 2907.323 in its entirety to the list of sexually oriented offenses. The recent decision of the Ohio Supreme Court Case *State v. Bodyke* (2010), 2010-Ohio-2424, held that the reclassification provisions of O.R.C. Section 2950.031 and O.R.C. Section 2950.032 “unconstitutionally require a member of the executive branch, ie., the Attorney General, to review and modify past judgments of the judicial branch that had classified sex offenders under the old law.” *Ohio v. Green*, 2010-Ohio-3448, *P6, citing *Bodyke*, supra. The Supreme Court then ordered that those reclassification provisions be severed from the statutory scheme and held that they “may not be applied to offenders who were classified under the former law, which as a result are reinstated.” *Id.* Accordingly, Defendant correctly argues that the order from the Court designating him as a sexually oriented offender who is subject to registration requirements is void an initio.

III. Conclusion

Accordingly, Defendant’s Motion Declaring the Registration Requirement Void Ab Initio is well taken and **SUSTAINED**.

SO ORDERED:



JUDGE FRANCES E. MCGEE

Copies of the above were sent to all parties listed below by ordinary mail this date of filing.

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