

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

STATE OF OHIO	:	
Plaintiff	:	CASE NO. 2012 CR 00701
vs.	:	Judge McBride
ANTHONY DAVIDTOMLINSON	:	DECISION/ENTRY
Defendant	:	

Scott O'Reilly, assistant prosecuting attorney for the state of Ohio, 123 North Third Street, Batavia, Ohio 45103.

Amelia V. Morgan, assistant public defender for the defendant Anthony David Tomlinson, 10 South Third Street, Batavia, Ohio 45103.

This cause is before the court for consideration of a motion to dismiss filed by the defendant Anthony Tomlinson. The defendant is charged in a one-count indictment with failure to register a change of address in violation of R.C. 2950.05(F)(1), a felony of the first degree. This failure-to-notify offense is alleged to have occurred on or about June 2, 2012.

R.C. 2950.05(F)(1) provides that “[n]o person who is required to notify a sheriff of a change of address pursuant to division (A) of this section * * * shall fail to notify the appropriate sheriff in accordance with that division.”

The defendant was classified as a sexual predator under former R.C. Chapter 2950 (“Megan’s Law”) in 1998 in Warren County Common Pleas Court case number CR1300 after being convicted of the crime of rape, a felony of the first degree.

Pursuant to R.C. 2950.99(A)(1)(a)(ii):

“If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the first, second, third, or fourth degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition, or, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition is a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as that offense committed in the other jurisdiction would constitute if committed in this state.”

The defendant argues that the indictment against him should be dismissed because he should have been charged under the version of R.C. 2950.99 that existed at the time of his original classification, which would have resulted in the failure-to-notify constituting a felony of the fifth degree. The defendant cites *State v. Bodyke* (2010), 126 Ohio St.3d 266, 933 N.E.2d 753, 2010-Ohio-2424, in support of his position.

In *Bodyke*, the court held that the current versions of R.C. 2950.031 and 2950.032 cannot be retroactively applied to offenders adjudicated under Megan’s Law

and ordered the classification and community-notification and registration orders imposed under Megan’s Law to be reinstated.¹

This precise legal issue has been addressed and ruled upon by the Twelfth District Court of Appeals in *State v. Topping*, 970 N.E.2d 1193, 2012-Ohio-2259. In *Topping*, the court recognized that there is currently a split among Ohio’s appellate courts as to “the application of R.C. 2950.99 penalties on Megan’s Law classified sex-offenders post-*Bodyke*.”² After examining the issue, the Twelfth District held the following:

“ * * * [W]here an offender's registration and notification requirements are not altered by his unconstitutional reclassification under the Adam Walsh Act, the penalty modifications of current R.C. 2950.99 are unaffected by the Ohio Supreme Court's holding in *Bodyke*. Therefore, we find that the current penalty provisions should apply to those originally classified under Megan's Law for acts committed after the effective date of the current R.C. 2950.99.”³

In *Topping*, the court noted that the defendant’s classification as a sexual predator under Megan’s Law required him to notify the sheriff of any change of address and that duty remained the same under the Adam Walsh Act’s requirements for Tier III sex offenders; as such, the defendant’s registration and notification requirements were not altered by his unconstitutional reclassification under the Adam Walsh Act.⁴

Just as in the *Topping* case, this court finds that the defendant has been restored to his prior classification as a sexual predator under Megan’s Law pursuant to the holding in *Bodyke*. However, as discussed in *Topping*, this has no effect on the

¹ *State v. Bodyke* (2010), 126 Ohio St.3d 266, 933 N.E.2d 753, 2010-Ohio-2424, ¶ 66.

² *State v. Topping*, 970 N.E.2d 1193, 2012-Ohio-2259, ¶ 21.

³ *Id.* at ¶ 20.

⁴ *Id.* at ¶ 15.

defendant's duty to notify the sheriff of any change of address.⁵ Therefore, the defendant's alleged failure-to-notify offense is not based upon an unconstitutional reclassification and the current version of R.C. 2950.99 is applicable to the offense as charged and is not being applied retroactively.⁶

Based on the holding in *State v. Topping*, the defendant's motion to dismiss is not well-taken and is hereby denied.

IT IS SO ORDERED.

DATED: _____

Judge Jerry R. McBride

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Decision/Entry were served via Facsimile/E-Mail/Regular U.S. Mail this 29th day of October 2012 upon all counsel of record and unrepresented parties.

Administrative Assistant to Judge McBride

⁵ Id. at ¶ 15.

⁶ Id. at ¶¶ 15, 20 and 24.