

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

<b>STATE OF OHIO</b>	)	<b>CASE NO: CR 05 469654</b>
	)	
<b>Plaintiff,</b>	)	<b>JUDGE JOHN P. O'DONNELL</b>
	)	
<b>vs</b>	)	
	)	
<b>JAMES KNIGHT</b>	)	<b><u>JOURNAL ENTRY</u></b>
	)	
<b>Defendant,</b>	)	

*John P. O'Donnell, J.:*

The defendant has filed a motion for relief from community notification pursuant to O.R.C. Section 2950.11(F)(2). The state has opposed the motion. This entry follows.

James Knight was indicted on August 17, 2005. The indictment alleged six counts: rape, two counts of gross sexual imposition, and three counts of kidnapping. The dates of the alleged offenses ranged from June 1 through September 30, 2004.

On August 28, 2007, the defendant pled guilty to count one, rape, a first degree felony in violation of O.R.C § 2907.02(A)(2). He was sentenced on August 31 to three years in prison.

A hearing pursuant to H.B. 180 was held in connection with the sentencing to determine Knight's sex offender classification. After the hearing, he was classified as a sexually oriented offender. The court declined to classify him as a sexual predator or habitual sexual offender, the two other possible classifications.

Since then, the sexual offender classification laws have been significantly amended by the enactment, effective January 1, 2008, of the Adam Walsh Act. One of the changes of the AWA was to create a tier classification for all sexual offenses. Upon conviction of a designated sex offense, a defendant is labeled as a Tier I, II, or III sex offender based only on the statutory

offense of conviction. The need for H.B. 180 evidentiary hearings to determine the appropriate classification has been eliminated.

As to someone like Knight, who was classified as a sexually oriented offender before the AWA, the law automatically re-classified such an offender into the appropriate tier depending only on the offense of conviction. Revised Code § 2950.01(G)(1)(a) classifies as a Tier III sex offender a person who has been convicted of rape in violation of O.R.C. § 2907.02. Accordingly, Knight was re-classified as a Tier III sex offender.

Before now, Knight has not been the subject of community notification by the sheriff to nearby residents and others of his presence in the neighborhood. However, O.R.C. § 2950.11 as amended by the AWA provides that the sheriff must provide to neighbors listed in the statute a notice of a Tier III offender's residence in the area. Knight has now been advised by the sheriff that community notification of his residence is imminent.<sup>1</sup>

The AWA allows a defendant to seek relief from community notification. O.R.C. § 2950.11(F)(2) provides, in pertinent part:

The notification provisions of this section do not apply to a person described in division (F)(1)(a), (b), or (c) of this section if a court finds at a hearing after considering the factors described in this division that the person would not be subject to the notification provisions of this section that were in the version of this section that existed immediately prior to the effective date of this amendment.

The hearing contemplated by this section is civil in nature, but § 2950.11 is silent on the subject of the court that should consider the request. Guidance is found at O.R.C. §§ 2950.031 and 2950.032. Those sections authorize a sex offender who wants to challenge the new registration requirements under the AWA to file a petition in the common pleas court of the

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<sup>1</sup> Knight has not provided evidence of this notice.

county where they reside.<sup>2</sup> Because community notification is a tier classification requirement, this statute applies to a petition to contest community notification.

By contrast, a petition for post-conviction relief under O.R.C. § 2953.21 must be filed “in the court that imposed sentence.” The legislature knows how to designate the sentencing court as the appropriate venue for post-sentence proceedings and did not do so in the AWA. The statute here suggests, then, that the petition must be filed as a new civil action and not as a post-disposition motion in the underlying criminal case. Support for the conclusion that a separate civil petition must be filed is also found in the context of *Gildersleeve v. State*<sup>3</sup>, the authority relied upon by Knight in his motion here. That case involved consolidated appeals by 17 different sex offenders, all of whom had filed new civil actions to contest their tier registration requirements.

Because this is not a new civil action, Knight’s petition is not before the appropriate court.<sup>4</sup>

Additionally, Knight’s motion fails on the merits. He argues that he cannot now be subject to community notification since he was not subject to community notification under H.B. 180. He cites to the following language in *Gildersleeve* for support:

For those Tier III offenders who were not subject to community notification under the former statute, we find that they are exempt from community notification under the AWA. See *State v. Clay*, 177 Ohio App.3d 78, 2008-Ohio-2980 (First District held that if appellant had been classified as a sexually oriented offender under H.B. 180, then he would be exempt from community notification under the current R.C. 2950.11(F)(2)). In such situations, the court need not hold an evidentiary hearing or consider the R.C. 2950.11(F)(2) factors.

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<sup>2</sup> The petition must be filed within sixty days of the defendant’s receipt of notice of the new tier classification and its accompanying requirements.

<sup>3</sup> 2009-Ohio-2031, Cuyahoga App. No. 91515, unreported.

<sup>4</sup> This petition also may not be timely, but there is no evidence of record about when he received notice of his new registration requirements.

However, Knight was convicted of rape in violation of O.R.C. § 2907.02(A)(2). A violation of that section is an aggravated sexually oriented offense under former O.R.C. § 2950.01(O). The version of O.R.C. § 2950.11 in effect at the time of Knight's conviction provided that community notification requirements did apply to an offender whose duty to register arises from committing an aggravated sexually oriented offense without regard to his H.B. 180 sex offender classification. In short, Knight was subject to community notification under the former statute, and *Gildersleeve* does not apply.

For all of these reasons, the defendant's motion is denied.

**IT IS SO ORDERED:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Judge John P. O'Donnell

**SERVICE**

A copy of this Journal Entry was sent by regular U.S. mail, this \_\_\_\_\_ day of February, 2010, to the following:

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Judge John P. O'Donnell