LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
JOURNAL ENTRY
Hon. D. Chris Cook, Judge

Date Mar. 29, 2017 Case No. 94CR046101

STATE OF OHIO
Plaintiff

Paul Griffin
Plaintiff's Attorney

VS

DAVID A. STEARNS
Defendant

Defendant's Attorney

This matter is before the Court as the Ohio Department of Rehabilitation and Correction has requested a H.B. 180 Sexual Predator Classification Hearing for the Defendant. The request is hereby GRANTED. **See Journal Entry.**

Hearing scheduled for **Friday, May 4, 2017 @ 11:00 am.** The Prosecutor is ordered to advise any victims and disclose any witnesses and/or evidence it intends to use. The Court will appoint counsel forthwith, as the Defendant is presumptively indigent.

The Lorain County Sheriff is hereby ordered to transport the Defendant from his parent institution at Southeastern Correctional Institution to Lorain County Correctional Facility at the Sheriff's convenience but in time for the hearing.

IT IS SO ORDERED. No Record.

JUDGE D. CHRIS COOK

cc: Griffin, APA
_____, Esq.
ODRC: Liann B. Bower, Chief of BSCRM
Lorain County Sheriff

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Plaintiff

Paul Griffin
Plaintiff's Attorney

VS

DAVID A. STEARNS
Defendant

Pro se
Defendant's Attorney

This matter is before the Court as on March 21, 2016 the Ohio Department of Rehabilitation and Correction's ("ODRC") Bureau of Sentence Computation & Record Management ("BSCRM") sent the Court a House Bill 180 Sexual Predator Hearing Request, pursuant to R.C. 2950.09(C)(1), *repealed, 1/1/2008.*

The Case at hand involves a defendant who, more than 20 years ago, plead guilty to eight counts of rape and four counts of gross sexual imposition involving his four pre-pubescent male foster children and his seven-year-old niece. On October 28, 1996, he was sentenced to 10 to 25 years in prison and is currently scheduled to be released on October 21, 2021. The Defendant is currently 81 years old; he will be 85 when his prison term expires.

The process and procedure, and applicable law mandating the classification of sexually oriented offenders, is complex and abstruse. A brief history is in order:

MEGAN'S LAW – (S.B. 180, 1996, *amended,* S.B. 5, 2003)

From approximately 1963 to the present, Ohio's law governing the registration and classification of sex offenders and the ensuing community-notification requirements, has evolved substantially. The original version of the statute was seldom used, *State v. Bodyke,* 126 Ohio St.3d 266, 2010-Ohio-2424, citing, *Sears v. State,* Clermont App. No. CA2008-07-068, 2009-Ohio-3541, ¶23, and it existed without amendment for three decades.

On the heels of a New Jersey statute passed in 1994 after the brutal rape and murder of a young child ("Megan's Law") and subsequent federal legislation passed shortly thereafter ("the Jacob Wetterling Act"), the Ohio General Assembly enacted its own version of Megan's Law in 1996. Am.Sub.H.B. No. 180. The law repealed prior

version of R.C. 2950 *et seq.*, and provided for offender registration, classification, and community notification.

Megan's Law provided for three levels of classification, each with its own duration, reporting requirements, and community notification requirements, to wit: sexually oriented offender, habitual sexual offender, and sexual predator. The law further mandated that prior to being deemed a sexual predator, a defendant was entitled to a full hearing with a panoply of attendant constitutional protections.

Megan's Law survived numerous constitutional challenges on a plethora of grounds including retroactivity and *ex post facto* claims, *State v. Cook* (1997), 83 Ohio St. 3d 404; privacy rights, property rights, reputation, double jeopardy, attainder, equal protection, and vagueness, *State v. Williams* (2000), 88 Ohio St.3d 513; and, separation of powers challenges, *State v. Thompson* (2001), 92 Ohio St.3d 584.

In 2003, the Ohio General Assembly amended Megan's Law through Am.Sub.S.B. No. 5 ("S.B. 5") which made more stringent and permanent the sexual predator classification, the registration requirements, and the community notification and residency-restriction provisions. S.B. 5 and its amendments were deemed constitutional by the Ohio Supreme Court in *State v. Ferguson* (2008), 120 Ohio St.3d 7.

Megan's Law remained the law in Ohio until December 31, 2007.

THE ADAM WALSH ACT - ("AWA" S.B. 10, 2007)

In 2007, again in response to federal legislation, the Ohio General Assembly enacted Am.Sub.S.B. No. 10, the AWA, which replaced Megan's Law and became effective January 1, 2008 (and is currently the law in Ohio). Like its federal counterpart, the AWA eliminates the three Megan's Law classifications and instead, divides sex offenders into three categories or "tiers," to wit: Tier I, Tier II, and Tier III – based solely on the crime committed. Significantly, the AWA eliminated the need (and requirement) for classification hearings and removed judicial discretion to determine which classification best fits the offender

Like the classifications in Megan's Law, the Tiers in the AWA mandate registration, community notification, and residency restrictions. That said, a concatenate analysis of Megan's Law and the AWA's similarities ends there. Unlike Megan's Law, where the registration process imposed on sex offenders was once described as an "inconvenience 'comparable to renewing a driver's license,'" the AWA was deemed "punitive" and not simply remedial. *State v. Williams,* 129 Ohio St.3d 344, 2011-Ohio-3374. While the AWA was ultimately found to be constitutionally sound; see *Williams,*

supra, and its progeny, it was declared unconstitutional as retroactively applied to defendants who committed sex offenses prior to its enactment.[1]

Relative to the case at bar, the *Williams* decision put in issue the proper statutory framework under which classification of sexually oriented offenders are to be categorized. It is well-settled that for those offenders who committed their crime(s) on or after January 1, 2008, the AWA applies. Similarly, it is clear that those offenders who committed their crime(s) between January 1, 1997 and December 31, 2007, Megan's Law applies, including the potential for sexual predator classification hearings. That said, how do we classify offenders (if at all) who committed their crime(s) *prior* to the enactment of Megan's Law?

THE ISSUE PRESENTED HEREIN: "THE *WILLIAMS* CONUNDRUM"

HOW, IF AT ALL, ARE SEXUALLY ORIENTED OFFENDERS TO BE CLASSIFIED WHEN THEY COMMITTED THEIR CRIME(S) *PRIOR* TO THE ENACTMENT OF MEGAN'S LAW

As noted, Megan's Law became operative January 1, 1997. In the case at bar, the Defendant was convicted on October 28, 1996 for crimes committed in 1994, well before its effective date.

Williams, supra, is both instructive and problematic. As noted by Justice O'Donnell in his dissent,

> In *State v. Cook* (1998), 83 Ohio St.3d 404, we considered the constitutionality of Megan's Law as applied to offenders who had committed sexually oriented offenses before the effective date of the statute. We held that the law did not violate . . . the Retroactive Clause [of the Ohio Constitution] because the registration requirements provided in the act were necessary to achieve the legislature's remedial purpose of protecting the public from sexual offenders. *Id.* at 412.

Conversely, in finding the retroactive application of the AWA to offenders who committed crimes prior to January 1, 2008 unconstitutional, the *Williams* court held "We . . . remand the cause for resentencing **under the law in effect at the time Williams committed the offense**." *Id.* at ¶23, (emphasis added).

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[1] Recall that Megan's Law survived a constitutional retroactive challenge.

Herein lies the conundrum: *Cook,* holding that retroactive application of Megan's Law was constitutionally permissible, was decided in 1998. *Williams,* holding that the offender (initially subject to the AWA) must be sentenced "under the law in effect at the time [he] committed the offense," was decided in 2011.

It follows, *ipsi dixit,* that if *Williams* is controlling, and offenders must be sentenced (that is, classified), "under the law in effect at the time they committed the offense," that the Defendant herein is not subject to Megan's Law but must be sentenced, if at all, under the pre-Megan's Law iteration of R.C. 2950, *et seq.*

Conversely, if the holding in *Williams* is limited to only those offenders who were sentenced after the effective date of the AWA but committed their offense(s) *prior* to the AWA, then *Cook* is controlling and the Court must proceed with a H.B. 180 sexual predator classification hearing.

ANALYSIS & CONCLUSION

It is tempting to read *Williams* broadly and determine that Megan's Law can no longer be retroactively applied to offenders who committed their crime(s) prior to its enactment. The decision in *Williams* gives no guidance as to whether it is limited in application only to offenders similarly situated to Williams himself or is to be broadly construed such that all offenders are to be sentenced under the law in effect "at the time [of their] offense."

This question has been raised by at least one other commentator as being unresolved and having multiple interpretations. In the Ohio Judicial Conference's ("OJC") most recent Criminal Law Bench Book, Chapter Seven-A: Sex Offenses, and Child-Victim Oriented Offenses – Senate Bill 10, the OJC notes,

> . . . it is possible to interpret this language as holding that an offense committed before Megan's Law was enacted is thus not subject to Megan's Law. Another interpretation is that offenses committed prior to January 1, 2008 are subject to Megan's Law, base upon repeated Ohio Supreme Court decisions upholding retroactive application of provisions in Megan's Law. (Citations omitted.)

That said and considered, this Court finds the analysis by the Supreme Court in *Cook, supra,* and its progeny, more convincing. H.B. 180, Megan's Law, revised prior R.C. 2950 *et seq.* and established a comprehensive system of sex-offender classifications and registration. As noted by Justice O'Donnell in his dissent in *Williams,* "The legislature expressed its intent that the act apply retroactively, regardless of when the underlying sex offense had been committed . . . and provided criminal penalties for offenders who failed to comply with its registration requirements." *Id.* at ¶28.

The decision in *Williams* specifically found that retroactive application of the AWA was unconstitutional because of it's significantly more onerous, stringent, and punitive metric compared to Megan's Law. Recall that the burdens imposed by Megan's Law were at one time referred to as tantamount to "renewing a driver's license," and, thus, remedial in nature. Conversely, the AWA was found to be much more burdensome, intrusive, and stigmatizing, hence, its retroactive application was bared.

Here, the Court must consider application of Megan's Law to the Defendant and its less-onerous requirements than those of the AWA in light of the holding in *Williams*. As Megan's Law has survived all retroactive challenges to its constitutionality and it is no more burdensome today than it was when adopted in 1996 (and amended in 2003), it follows that its retroactive application to offenses committed before its enactment is apposite.

IT IS THEREFORE ORDERED:

That pursuant to R.C. 2950.09(C), *repealed 1/1/2008, Cook, Bodyke,* and *Williams, supra,* as well as the procedures mandated for sexual predator classification hearings enunciated in *State v. Eppinger,* 91 Ohio St.3d 158, 2001-Ohio-158, that this matter shall come on for Sexual Predator Classification Hearing on **Friday, May 4, 2017 @ 11:00 am.**

IT IS SO ORDERED.

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Judge D. Chris Cook