

IN THE
SUPREME COURT OF OHIO

IN RE: R.B.,	:	NO.
	:	
A Minor-Appellee.	:	On Appeal from the Hamilton County
	:	Court of Appeals, First Appellate
	:	District
	:	
	:	Court of Appeals
	:	Case Numbers C-170622 & C-170623
	:	

MEMORANDUM IN SUPPORT OF JURISDICTION

Joseph T. Deters (0012084P)
Prosecuting Attorney
Paula E. Adams (0069036P)
(Counsel of Record)
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3228
Fax No. (513) 946-3021
paula.adams@hcpros.org

COUNSEL FOR PLAINTIFF-APPELLANT,
STATE OF OHIO

Raymond T. Faller (0013328)
Hamilton County Public Defender
Julie Kahrs Nessler (0085189)
(Counsel of Record)
Assistant Hamilton County Public Defender
125 East Court Street, 9th Floor
Cincinnati, Ohio 45202
(513) 946-8256

COUNSEL FOR MINOR-APPELLEE, R.B.

Daniel T. Van (0084614)
Senior Appellate Attorney
Cuyahoga County Prosecutor's Office
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7865
dvan@prosecutor.cuyahogacounty.us

COUNSEL FOR AMICUS CURIAE
THE OHIO PROSECUTING
ATTORNEY'S ASSOCIATION

Timothy Young (0059200)
Ohio Public Defender
250 E. Broad Street, Suite 1400
Columbus, Ohio 43215-2998

Table of Contents

	<u>Page</u>
Explanation of why this case is a case of public or great general interest.....	1
Statement of the Case and Facts	2
Argument in Support of the Proposition of Law	4
<u>Proposition of Law</u> : Once a juvenile court makes an appropriate classification under R.C. 2152.83, it is permanently vested with jurisdiction to review the classification in accordance with R.C. 2152.84 and 2153.85.	4
Conclusion	7
Certificate of Service	7

**EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT
GENERAL INTEREST**

The present case provides this Court the opportunity to render much needed guidance to Ohio's juvenile courts regarding compliance with the timing requirements of R.C. 2152.84's "completion of disposition hearings" for those juveniles adjudicated delinquent and initially classified for sexually oriented or child victim oriented offenses. R.C. 2152.84(A)(1) provides that upon those juveniles' completion of disposition, the juvenile court shall review the effectiveness of the disposition to determine whether the prior classification should be continued, modified, or terminated. Misinterpreting this Court's holding in *State ex rel. Jean-Baptiste v. Kirsch*, 134 Ohio St.3d 421, 2012-Ohio-5697, 983 N.E.2d 302, the First Appellate District determined that the juvenile court loses jurisdiction to proceed with a R.C. 2152.84 hearing—even, as here, one already in progress—as soon as the juvenile obtains the age of twenty-one years. The court of appeals ignored the obvious procedural distinction between the present case involving the "completion of disposition" review hearing pursuant to R.C. 2152.84 and that in *Jean-Baptiste* involving the initial classification hearing pursuant to R.C. 2152.83.

The Ohio General Assembly saw fit to provide multiple opportunities in R.C. 2152.84 and R.C. 2152.85 for a juvenile offender's classification to be reviewed exclusively by the juvenile court even beyond the age of jurisdiction. The First Appellate District's decision runs counter to the legislature's efforts. The State of Ohio submits that if the decision stands, juvenile courts will be forced to simply rush through the R.C. 2152.84 hearings without the opportunity to engage in meaningful review of the Tier I, II, or III sex offender and child victim offender classifications, which carry on well into adulthood. The rigid interpretation of the timing of the R.C. 2152.84 "completion of

disposition” review hearings in the First Appellate District frustrates the juvenile court’s ability to fulfill its statutory duty after it makes an appropriate initial classification under R.C. 2152.83. The State of Ohio respectfully urges this Court to accept jurisdiction to clarify that a juvenile court maintains jurisdiction to hold a “completion of disposition” review hearing pursuant to R.C. 2152.84 even after the juvenile offender has turned twenty-one years old.

STATEMENT OF THE CASE AND FACTS

On September 21, 2011, a complaint was filed in juvenile court alleging that R.B. committed what would be two counts of the third-degree felony version of gross sexual imposition if committed by an adult. He admitted and was adjudicated delinquent on two counts of what would be the fourth-degree felony version of gross sexual imposition if committed by an adult on October 14, 2011.¹ The factual summary provided at R.B.’s plea hearing indicates that when he was fourteen years old, he placed his penis in the mouths of his two four-year old cousins. These offenses occurred on December 1, 2010 when the victims were visiting the residence at 4454 Eastern Avenue where R.B. was staying. Both victims disclosed that R.B. placed his penis in their mouths and touched his penis on their buttocks. R.B. also admitted to doing these acts.

On November 17, 2011, R.B. and the state agreed to a Tier I classification. On December 2, 2011, R.B. was committed to the permanent custody of the Ohio Department of Youth Services until the age of twenty-one. The commitment was suspended, and R.B. was placed on probation. As a condition of probation, R.B. was ordered to attend and complete the Altercrest residential program. The magistrate’s

¹ The plea agreement also included the dismissal of two counts of Rape as charged under case numbers 11/9082 and 11/9084.

December 2, 2011 decision under case 11-9085 further explains “[r]easonable efforts that were made, but were unsuccessful, included the following: sexual offender assessment” and orders that R.B. be held in detention until transported to Altercrest. On December 8, 2011, the magistrate ordered the matter continued for a “Juvenile Offender Registrant classification hearing and disposition to 1/6/2012.”

On January 13, 2012, a “decision of magistrate” was issued indicating that “the youth is a Tier III sex offender” with an additional notation “THIS IS A TIER I CLASSIFICATION–NOT TIER III.” (C-170622 T.d.23; C-170623 T.d.37) These entries were also signed by Judge John Williams. On the same day, R.B. and his mother signed the “Explanation of Duties to Register as a Juvenile Offender Registrant or Child Victim Offender” indicating R.B.’s status as a Tier I sex offender required him to register annually for ten years. (C-170622 T.d.23; C-170623 T.d.37) R.B. neither objected to nor appealed from the magistrate’s decision.

On February 6, 2013, a magistrate issued an order terminating R.B.’s placement at Altercrest, continuing the prior order of probation, and placing him on electronic monitoring until March 7, 2013. On July 29, 2013, Judge Williams placed R.B. on “non-reporting probation with Monitored Time.”

On July 11, 2014, R.B. filed a “Sealing Application.” The application was denied on September 3, 2014 because the “requisite requirements for eligibility have not yet been met” and the court noted that the “defendant is a registered sex offender and is required to register until 2022, unless reclassified.” On October 14, 2014, the magistrate issued an order setting the matter for a “completion of disposition hearing pursuant to ORC 2152.84” on November 19, 2014. At R.B.’s request or upon his motions, the matter

was continued numerous times from November 19, 2014 all the way to March 20, 2017. On April 28, 2015, the magistrate issued a decision referencing the January 13, 2012 classification hearing where “defendant was determined to be a Tier III sex offender” and noted that R.B. had made a subsequent “informal request for re-classification” which “is now withdrawn.” The magistrate’s decision was approved by Judge Williams on May 13, 2015. R.B. was represented by counsel and did not object or appeal the decision.

On April 15, 2016, R.B. filed a motion to vacate void classification. That motion was then withdrawn by defense counsel on October 11, 2016. On October 24, 2016, the State of Ohio filed a motion for a completion of disposition hearing. R.B. filed a memorandum in opposition as well as a motion for stay of execution pending appeal on November 7, 2016. The matter was argued before Judge Williams on December 6, 2016. On December 23, 2016, R.B.’s request for a stay was denied and the matter was referred to a magistrate for an “end of disposition hearing.”

On January 30, 2017, the magistrate denied R.B.’s opposition to the “end of disposition hearing,” and R.B. filed objections. On March 6, 2017, Judge Williams denied the objections as well as R.B.’s subsequent motion for reconsideration. R.B. was present for a hearing before a magistrate on May 8, 2017, and written closing arguments were ordered by the magistrate. On July 13 and 14, 2017, the magistrate issued a decision continuing the Tier I sex offender classification. R.B. filed objections. A hearing was held before Judge Williams on September 19, 2017, and the matter was taken under advisement. On October 30, 2017, Judge Williams issued a written decision denying R.B.’s objections as well as accepting and approving the magistrate’s decision.

On appeal from the juvenile court's decision, the First District Court of Appeals held that because R.B. turned twenty-one years old on July 20, 2017, the juvenile court judge was without jurisdiction to conduct the R.C. 2152.84 completion of disposition review hearing. The court of appeals further concluded that R.B. therefore has no duty to register under R.C. Chapter 2950.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law: Once a juvenile court makes an appropriate initial classification under R.C. 2152.83, it is permanently vested with jurisdiction to review the classification in accordance with R.C. 2152.84 and 2153.85.

The First Appellate District Court determined that a juvenile court immediately loses jurisdiction to hold the R.C. 2152.84 completion of disposition review hearing upon a juvenile's twenty-first birthday. This determination is not at all in line with the overall legislative goal provided in R.C. 2152.83 through R.C. 2152.85. In three separate statutory provisions, the juvenile court is given exclusive jurisdiction to classify, modify, or terminate the tier level for those individuals who were adjudicated delinquent for sexually oriented or child-victim oriented offenses. The juvenile court has discretion to provide an initial classification of Tier I, II, or III to juveniles adjudicated delinquent for sexually oriented or child victim oriented offenses. R.C. 2152.83. Next, "upon completion of the disposition," the juvenile court must hold a hearing and again has discretion to continue, modify, or terminate the initial classification. R.C. 2152.84. Finally, throughout the duration of a juvenile's registration obligation and upon petition by the juvenile, the juvenile court maintains jurisdiction to periodically review the classification and determine if it should continue, be modified, or be terminated. R.C. 2152.85. In each of these subsections, the General Assembly provided that the juvenile

court's order related to registration "shall remain in effect for the period of time specified in section 2950.07 of the Revised Code" and further specified that "the child's attainment of eighteen or twenty-one years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division." R.C. 2152.83(E); R.C. 2152.84(D); and R.C. 2152.85(F).

In the case at bar, it is R.C. 2152.84, the second statutory provision related to classification, that the First District Court of Appeals has grossly misinterpreted. R.C. 2152.84 provides for a mandatory review of the R.C. 2152.83 initial classification. In conducting its mandatory review of the initial classification, a juvenile court judge is required to hold a hearing "upon completion of the disposition." R.C. 2152.84 (A)(1). A definition of the phrase "upon completion of the disposition" is not provided. "In reviewing a statute, a court cannot pick out one sentence and disassociate it from the context, but must look to the four corners of the enactment to determine the intent of the enacting body." *State v. Wilson*, 77 Ohio St.3d 334, 336, 1997-Ohio-35, 673 N.E.2d 1347. In the First Appellate District, the purpose of the R.C. 2152.84 review hearing has completely been lost to an overreaching and hyper-technical interpretation of the timing of the hearing. The intent of R.C. 2153.84 is simply to provide the juvenile court the opportunity to consider how the juvenile responded to his or her specific disposition and whether the juvenile poses a future risk; it should not, through a tortured reading, be transformed into a compulsory expiration clause that is clearly in conflict with a separate section of the statute (R.C. 2950.07(B)).

The fact that the juvenile courts are especially equipped to preside over matters pertaining to the classification of those adjudicated delinquent for sexually oriented or

child-victim oriented offenses has been recognized by this Court. “[P]roviding a judge with more options for dealing with a delinquent juvenile is not contrary to the goals of the juvenile justice system.” *In re I.A.*, 140 Ohio St.3d 203, 2014-Ohio-3155, 16 N.E.3d 653, ¶16. The juvenile court retains jurisdiction to review its classifications under R.C. 2152.84 and 2152.85. *In re D.S.*, 146 Ohio St.3d 182, 2016-Ohio-1027, 54 N.E.3d 1184. It was only in *State ex. rel. Jean-Baptiste v. Kirsch*, 134 Ohio St.3d 421, 2012-Ohio-5697, 983 N.E.2d 302, where this Court determined that the juvenile court was without jurisdiction to hold the initial R.C. 2152.83 juvenile sex offender classification hearing after the offender had turned twenty-one years old. The review hearings provided for in R.C. 2152.84 and in R.C. 2152.85 were not considered in *Jean-Baptiste*. The court of appeals readily accepted that the initial classification in the present case was proper but then went on to expand this Court’s holding in *Jean-Baptiste* to the R.C. 2152.84 review hearing. This expansion of *Jean-Baptiste* ignores the purpose of R.C. 2152.84 and is unreasonable.

The State of Ohio submits that given the wide span of juvenile dispositions imposed upon juveniles throughout the state, the timing of the “upon completion of disposition” review hearing can only be interpreted to be at such time that the juvenile court can reasonably give consideration to how the juvenile responded to all aspects of the imposed disposition and adequately assess future risk. Thus far, “upon completion of disposition” has been interpreted on a case-by-case basis in the First Appellate District and in each case the timing has differed drastically. In *In re Antwon C.*, 182 Ohio App.3d 237, 2009-Ohio-2567, 912 N.E.2d 182, ¶20 (1st Dist.), the R.C. 2152.84 review hearing was required “**when** a child completes all aspects of the disposition, including probation

and any ordered treatment.” In *State v. Amos*, 2017-Ohio-8448, 87 N.E.3d 1305, ¶14 (1st Dist.), the R.C. 2152.84 review hearing was required “**before** Amos was discharged from parole.” In the present case, the R.C. 2152.84 review hearing was required “**prior to the completion of his disposition upon his turning 21.**” In *re R.B.*, 1st Dist. Hamilton Nos. C-170622 & C-170623, 2019-Ohio-3298, ¶14. It is only by action from this Court that this trio of cases can be reconciled to properly guide the juvenile courts as to when they are supposed to hold the R.C. 2152.84 review hearing.

CONCLUSION

This Court should accept jurisdiction over this matter to clarify to all of the appellate districts that juvenile courts have permanent jurisdiction to review the juvenile sexual offender classifications in accordance with R.C. 2152.84 and 2153.85.

Respectfully,

Joseph T. Deters, 0012084P
Prosecuting Attorney

/s/ Paula E. Adams
Paula E. Adams, 0069036P
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Phone: 946-3228
Attorneys for Plaintiff-Appellant,
State of Ohio

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing Memorandum in Support of Jurisdiction, by United States mail, addressed to Julie Kahrs Nessler, Hamilton County Public Defender's Office, 125 East Court Street, 9th Floor, Cincinnati, Ohio, 45202, counsel of record and Timothy Young, Ohio Public Defender, 250 E. Broad Street, Suite 1400, Columbus, Ohio 43215-2998, this 30th day of September, 2019.

/s/ Paula E. Adams
Paula E. Adams, 0069036P
Assistant Prosecuting Attorney