[Cite as *State v. Petralia*, 2009-Ohio-4450.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Respondent-Appellee,	:	**CASE NO. 2008-L-095**
- vs -	:	
JOHN J. PETRALIA, II,	:	
Defendant-Petitioner-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case No. 08 MS 000058.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Teri R. Daniel*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Respondent-Appellee).

Richard J. Perez, Rosplock & Perez, Interstate Square Building I, 4230 State Route 306, #420, Willoughby, OH 44094 (For Defendant-Petitioner-Appellant).

MARY JANE TRAPP, P.J.

{¶1} John J. Petralia, II, appeals from a judgment of the Lake County Court of Common Pleas, which determined Mr. Petralia was properly reclassified as a Tier III offender and denied his Petition Contesting Classification. For the following reasons, we affirm the judgment of the trial court.

{¶2} Mr. Petralia pled guilty to two counts of gross sexual imposition, felonies of the third degree, in violation of R.C. 2907.05, and two counts of gross sexual imposition, felonies in the fourth degree, in violation of R.C. 2907.05. He was found to be a sexual

predator, a finding which this court affirmed on appeal. He was reclassified as a Tier III offender with notification requirement, pursuant to the new version of R.C. Chapter 2950.

{¶3} Mr. Petralia filed a petition with the Lake County Court of Common Pleas, requesting a hearing on the application of the new law to him. The trial court held a hearing on May 21, 2008, and found that Mr. Petralia did not prove by clear and convincing evidence that the new registration requirements do not apply to him. The court therefore found him to be properly reclassified as a Tier III offender. The court further determined Mr. Petralia is subject to community notification under the current R.C. Chapter 2950 due to his prior status as a sexual predator.

{¶4} Mr. Petralia timely appeals and raises the following assignments of error:

{¶5} "[1.] The trial court erred when it denied appellant's petition challenging reclassification and reclassified his sex offender status, pursuant to Ohio's Adam Walsh Act, Senate Bill 10, an unconstitutional body of laws.

{¶6} "[2.] The trial court erred when it denied appellant the opportunity for a hearing pursuant to R.C. 2950.031 or R.C. 2950.032, to determine whether an exception existed that would prevent appellant from being automatically reclassified as a Tier III offender."

{¶7} "Ohio's new sexual offender law was adopted by the Ohio General Assembly in Senate Bill 10. The legislation was enacted so that the state law would be consistent with the federal Adam Walsh Child Protection and Safety Act of 1996.

{¶8} "Prior to Senate Bill 10, when a criminal defendant was found guilty of a sexually oriented offense, he could be classified as a sexually oriented offender, a

habitual sex offender, or a sexual predator. The prior statutory scheme provided that a defendant's designation under the three categories would be predicated upon the nature of the underlying offense and findings of fact made by the trial court during a sexual classification hearing.

{¶9} "Under the new legislation, those three labels are no longer applicable. Instead, a defendant who has committed a sexually oriented offense can only be designated as either a sex offender or a child victim offender. There are now three tiers of sexual offenders. The extent of the defendant's registration and notification requirements will depend on the tier. Furthermore, the placement in a tier turns solely on the crime committed.

{¶10} "Another change of the sexual offender classification system implemented under the new law concerns the duration of the registration and notification requirements for the sex offenders. Prior to Senate Bill 10, if a defendant was deemed a sexually oriented offender, he was required to register once each year for a period of 10 years, but there was no notification requirement; if he was labeled as a habitual sex offender, he had to register once every six months for 20 years, and the community could be given notice of his presence at the same rate; and, if he was designated a sexual predator, the duty to register was once every three months for life, and notification could also take place at the same rate for life.

{¶11} "Under the new statutory scheme set forth in current R.C. Chapter 2950, the registration and community notification requirements are increased for sex offenders. If the defendant's sexual offense places him in the 'Tier I' category, he is required to register once every year for a period of 15 years, but there is no community

notification; if the defendant's offense falls under the 'Tier II' category, registration must take place once every six months for 25 years, and there is still no notification requirement; and, if the sexual offense places the defendant in the 'Tier III' category, the requirements are essentially the same as for a sexual predator, in that there is a duty to register once every three months for life, and community notification can occur at that same rate for life. Community notification under the new scheme requires the sheriff to give the notice of an offender's name, address, and conviction to all residents, schools, and day care centers within 1,000 feet of the offender's residence. The new law also prohibits all sex offenders from residing within 1,000 feet of a school or day care center. These registration and notification requirements under the Adam Walsh Act are retroactive and applicable to offenders whose crimes were committed before the effective date of the statute." *State v. Charette*, 11th Dist. No. 2008-L-069, 2009-Ohio-2952, ¶7-11.

{¶12} Under his assignment of error, Mr. Petralia raises several constitutional claims. This court has addressed and rejected the majority of these claims in a unanimously decided case in *State v. Swank*, 11th Dist. No. 2008-L-019, 2008-Ohio-6059, and in *Charette* (O'Toole, J. dissenting).[1]

{¶13} **Separation of Powers**

{¶14} First, Mr. Petralia asserts that the new law violates the doctrine of separation of powers. Specifically, he claims it usurps the court's prior adjudication of

1. We also note all our sister districts have reached the same conclusion. See *Sewell v. State*, 181 Ohio App.3d 280, 2009-Ohio-872; *State v. Desbiens*, 2d No. 22490, 2008-Ohio-3375; *In re Smith,* 3d Dist. No. 1-07-58, 2008-Ohio-3234; *State v. Longpre*, 4th Dist. No. 08CA3017, 2008-Ohio-3832; *State v. Hughes*, 5th Dist. No. 2008-CA-23, 2009-Ohio-2406; *State v. Bodyke*, 6th Dist. Nos. H-07-040, H-07-041, and H-07-042, 2008-Ohio-6387; *State v. Byers,* 7th Dist. No. 07 CO 39, 2008-Ohio-5051; *State v. Holloman-Cross*, 8th Dist. No. 90351, 2008-Ohio-2189; *In re G.E.S.*, 9th Dist. No. 24079, 2008-Ohio-4076; *State v.*

him as a sexually oriented offender and in doing so it encroaches upon the authority reserved for the judiciary. Addressing an identical claim, we stated the following in *Charette* at ¶19-21:

{¶15} "The Seventh District evaluated a similar claim in *State v. Byers*, 7th Dist. No. 07CO39, 2008-Ohio-5051, and found no violation of the doctrine of separation of powers. The Seventh District adopted the following analysis provided in *State v. Slagle*, 145 Ohio Misc.2d 98, 2008-Ohio-593:

{¶16} "'[T]he Assembly has enacted a new law, which changes the different sexual offender classifications and time spans for registration requirements, among other things, and is requiring that the new procedures be applied to offenders currently registering under the old law or offenders currently incarcerated for committing a sexually oriented offense. Application of this new law does not order the courts to reopen a final judgment, but instead simply changes the classification scheme. This is not an encroachment on the power of the judicial branch of Ohio's government.' *Byers* at ¶73, quoting *Slagle* at ¶21 and citing [*Smith* at ¶39] and [*G.E.S*. at ¶42] (discussing the issue in relation to child-victim offender).

{¶17} "Furthermore, as this court noted already, the registration and notification scheme of the new legislation is not punitive in nature, but rather civil and remedial. *Swank* at ¶99. The judiciary is empowered to hear a controversy between adverse parties, ascertain the facts, and apply the law to the facts to render a final judgment. Id., citing *Fairview v. Giffee* (1905), 73 Ohio St.183, 190. In the criminal context, the judiciary is empowered to determine if a crime has been committed and the penalty to

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Gilfillan, 10th Dist. No. 08AP-317, 2009-Ohio-1104; *Ritchie v. State,* 12th Dist. No. CA2008-07-073, 2009-Ohio-1841.

be imposed on a defendant. Registration requirements such as those for motorists, corporations, or sex offenders, are always the province of the legislature and such laws do not require judicial involvement. *Swank* at ¶99. Therefore, no abrogation of final judicial decisions occurred when a petitioner such as Mr. Charette is reclassified and subjected to additional requirements. The new law as applied to a petitioner in Mr. Charette's situation does not violate the separation of powers."

{¶18} **Ex Post Facto Clause**

{¶19} Mr. Petralia claims the retroactive application of Ohio's Adam Walsh Act to him constitutes an ex post facto law proscribed by Article I, Section 10 of the United State Constitution. That section provides: "[n]o State shall *** pass any *** ex post facto Law." Under this provision, "any statute which punishes as a crime an act previously committed, which was innocent when done; which makes more burdensome the punishment for a crime, after its commission, *** is prohibited as ex post facto." *Beazell v. Ohio* (1925), 269 U.S. 167, 169-170. We have addressed this constitutional claim fully in *Swank*, and held that Senate Bill 10 enacted by the General Assembly is civil in nature and not punitive in intent or effect and therefore not an ex post facto law.[2] Id. at ¶68-89.

{¶20} **Retroactivity**

2. We note, however, the Supreme Court of Ohio has become more divided on the issue of whether the registration and notification statute has evolved from a remedial and civil statute into a punitive one. As Justice Lanzinger stated in her concurring in part and dissenting in part opinion in *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, ¶46: "I do not believe that we can continue to label these proceedings as civil in nature. These restraints on liberty are the consequences of specific criminal convictions and should be recognized as part of the punishment that is imposed as a result of the offender's actions." See, also, *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824 (Lanzinger, J., dissenting). We believe Senate Bill 10 merits review by the Supreme Court of Ohio to address the issue of whether the current version of R.C. Chapter 2950 has been transformed from remedial to punitive law. However, before that court revisits the issue, we, as an inferior court, are bound to apply its holdings in *State v. Cook* (1998), 83 Ohio St.3d 404 and *Wilson*.

{¶21} Mr. Petralia argues even if the new law does not constitute an ex post facto law as applied to him, Article II, Section 28 of the Ohio Constitution prohibits its retroactive application to an offender such as him, who has already been sentenced and classified under the old law. The courts have interpreted the constitutional prohibition against retroactive laws to apply only to laws affecting substantive rights but not to procedural or remedial aspects of such laws. *Kunkler v. Goodyear Tire & Rubber Co.* (1988), 36 Ohio St.3d 135, 137. Our court has addressed this constitutional claim in *Swank* and held that the registration and notification requirements of Senate Bill 10 are remedial and procedural in nature and not substantive, and therefore, Senate Bill 10 is not a retroactive law prohibited by the Ohio Constitution. *Swank* at ¶90-95.

{¶22} **Double Jeopardy**

{¶23} Mr. Petralia next claims his reclassification constitutes successive punishment and is therefore a double jeopardy violation pursuant to the Fifth and Fourteenth Amendments of the United States Constitution, and Article I, Section 10 of the Ohio Constitution, all of which forbid the imposition of multiple criminal punishments for the same offense in successive proceedings.

{¶24} The double jeopardy provision has been interpreted to apply in two basic situations: (1) when the state tries to pursue a second prosecution based upon the same facts; and (2) when the state attempts to impose a second punishment for the same offense. *Byers* at ¶100 (citations omitted). The double jeopardy prohibition can only be invoked when the conduct of the government involves criminal punishment. *State v. Williams* (2000), 88 Ohio St.3d 513, 528.

{¶25} In *Williams*, the Supreme Court of Ohio considered the question of whether the provisions of the 1997 version of R.C. Chapter 2950 imposed a second criminal penalty for purposes of the Double Jeopardy Clause. The court emphasized that, as part of its prior discussion in *Cook*, it had expressly held that the registration and notification requirements provided in that version of R.C. Chapter 2950 were not criminal in nature and did not inflict any punishment. The *Williams* court then determined that the holding in *Cook* dictated a conclusion that the enforcement of the registration and notification requirements did not result in a double jeopardy violation. *Williams* at 528.

{¶26} Because we have determined that the new registration and notification requirements are still to be characterized as civil and non-punitive, the *Williams* holding would still be controlling as to the present version of R.C. Chapter 2950. Its application to a defendant in Mr. Petralia's position does not constitute a second punishment prohibited by the double jeopardy provision. See, also, *Smith* at ¶38 (the court stated it is not persuaded that the Supreme Court of Ohio would view the issues of criminality and punishment regarding the provisions of Senate Bill 10 any differently than the manner it had interpreted the former R.C. 2950 et. seq. in the *Cook* and *Williams* decisions).

{¶27} **Substantive Due Process Rights and Privacy**

{¶28} Mr. Petralia also argues that the residency restrictions imposed by Senate Bill 10 violate the substantive component of the Due Process Clause in the Fourteenth Amendment to the United States Constitution and in Section 16, Article 1 of the Ohio

Constitution, as well as the right to privacy guaranteed by Section 1, Article 1 of the Ohio Constitution.

{¶29} We have considered and rejected this constitutional claim in *Swank*. There, the appellant also claimed the residency restrictions "violate his substantive due process rights because it interferes with a liberty interest tantamount to being on parole or his right of privacy." Id. at ¶108. We stated:

{¶30} "[C]ourts routinely decline such challenges unless evidence is presented that the defendant was actually injured by the residency restriction on the ground of waiver. *State v. Bruce*, 8th Dist. No. 89641, 2008-Ohio-926, ¶10-11. Appellant has failed to show or even argue that he owns property or resides within 1,000 feet of any of the above-listed facilities or that he was forced to move outside this limit. As a result, appellant's argument that S.B. 10 has interfered with his liberty or privacy interest fails because he has not shown that he has been actually injured by S.B. 10.

{¶31} "Moreover, a defendant lacks standing to challenge the constitutionality of a residency restriction unless the record shows the defendant suffered an actual deprivation of his property rights as a result of the application of such restriction to him. *State v. Pierce*, 8th Dist. No. 88470, 2007-Ohio-3665, ¶33. Because appellant has failed to show an actual deprivation of his property rights, he does not have standing to challenge the residency restriction of S.B. 10." *Swank* at ¶110-111. See, also, *State v. Amos*, 8th Dist. No. 89855, 2008-Ohio-1834, ¶43, citing the syllabus of *Palazzi v. Estate of Gardner* (1987), 32 Ohio St.3d 169 (the Supreme Court of Ohio held that "[t]he constitutionality of a state statute may not be brought into question by one who is not within the class against whom the operation of the statute is alleged to have been

unconstitutionally applied and who has not been injured by its alleged unconstitutional provision").

{¶32} Similarly here, the record does not show Mr. Petralia has suffered an actual injury from any residency restrictions imposed by Senate Bill 10, and therefore, we find his claim to be without merit.

{¶33} **Impairment of Contracts**

{¶34} Finally, Mr. Petralia asserts that the application of the provisions of Senate Bill 10 to him would violate the terms of his plea agreement and therefore would result in a breach of his contract with the state, in violation of the constitutional provisions against the impairment of contracts.

{¶35} A plea agreement is considered a contract between the state and a criminal defendant. As a result, such an agreement is subject to the general laws of contracts. *State v. Butts* (1996), 112 Ohio App.3d 683, 685-686. Therefore, if one side violates a term of a plea agreement, the other party has a right to pursue certain remedies, including the rescission of the agreement. *State v. Walker*, 6th Dist. No. L-05-1207, 2006-Ohio-2929, ¶13.

{¶36} However, in applying the elementary rules of contract law to plea agreements, the courts of Ohio have held that an alleged breach of such an agreement cannot be based upon an action which occurs following the performance of the various terms. See, e.g., *State v. Pointer*, 8th Dist. No. 85195, 2005-Ohio-3587, ¶9. That is, once a criminal defendant has entered his guilty plea and punishment has been imposed by the trial court, a breach of contract can no longer occur because both sides have fully performed their respective obligations under the plea agreement. Because

the registration and notification requirements of the new law, just as in former R.C. Chapter 2950, are merely remedial conditions imposed upon offenders after their release from prison and not additional punishment, they do not affect any plea agreement previously entered into between the offender and the state. Therefore, the enactment of the new sexual offender scheme under Senate Bill 10 does not constitute a breach of a prior plea agreement. See, also, *Slagle*.

{¶37} **Removal of Right of Review**

{¶38} Under the first assignment of error, Mr. Petralia also maintains R.C. 2950.09(D)(1), in effect at the time of his guilty plea, entitled him to a review by a trial court after five years with a potential for changing his sexual predator status. He claims the new law deprives him of this "vested" right of review.

{¶39} The same claim was raised by the defendant in *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, who objected to Senate Bill 5's elimination of the right of review provided in the former R.C. 2950.09(D). The Supreme Court of Ohio rejected his claim. The court first pointed out that an offender's sexual predator classification is a collateral consequence of his or her criminal acts, not a form of punishment per se. Id. at ¶34. The court reasoned that the defendant failed to establish "that he had any reasonable expectation of finality in a collateral consequence that *might* be removed. Indeed, the record before us is entirely devoid of such argument and of any evidence that would support a reasonable conclusion that [defendant] was likely to have his classification removed." (Emphasis original.) Id. This reasoning applies equally to Mr. Petralia's claim.

{¶40} The first assignment of error is overruled.

{¶41} **Whether Hearing was Properly Afforded**

{¶42} In his second assignment of error, Mr. Petralia claims he was denied the opportunity for a hearing pursuant to R.C. 2950.031 and R.C. 2950.032 "to determine whether an exception existed that would prevent [him] from being automatically reclassified as a Tier III offender."

{¶43} R.C. 2950.031(E) and R.C. 2950.032(E) allow an offender to request a court hearing to contest the application of the new registration requirements. The record reflects Mr. Petralia filed a petition to contest his reclassification on February 14, 2008. The petition stated that he "petitions this Court for a hearing to contest reclassification pursuant to R.C. 2950.031(E) or R.C. 2950.032(E). *** Petitioner requests, as a matter of right, a hearing to contest the application of the new registration requirements to Petitioner."

{¶44} The court held a hearing on May 21, 2008, and found Mr. Petralia to be properly classified as a Tier III offender. Despite the fact that he is now before this court challenging the outcome of that hearing, he claims to have been deprived of a hearing to contest his reclassification.

{¶45} The record reflects at the hearing Mr. Petralia claimed he was misclassified. He argued even though the trial court had previously adjudicated him as a sexual predator, his conviction for gross sexual imposition would place him in the Tier II category under the new law, and therefore he should now be reclassified as a Tier II offender instead.

{¶46} The trial court determined that under the plain language of the statute Mr. Petralia is properly reclassified as a Tier III offender, because he had previously been adjudicated as a sexual predator.

{¶47} We find the trial court's interpretation of the statute to be correct. Although R.C. 2950.01(F)(1) states that a Tier II sex offender *includes* an offender who was convicted of or pled guilty to gross sexual imposition in violation of R.C. 2907.05(A)(4), that statute does not preclude the possibility of such an offender being classified as a Tier III sex offender. This is because R.C. 2950.01(G), which defines a Tier III sex offender, encompasses an offender who had been adjudicated as a sexual predator, such as Mr. Petralia. See 2950.01(G)(5).

{¶48} The trial court conducted a hearing as required by R.C. 2950.031 or R.C. 2950.032 and correctly applied the law. Mr. Petralia is not entitled to any additional hearing beyond what is provided for in the statute. In *State v. Hayden*, 96 Ohio St.3d 211, 2002-Ohio-4169, the Supreme Court of Ohio held that the imposition of sex offender registration requirement on a defendant without holding a hearing did not deprive the defendant of any "constitutionally protected liberty interest," defined by the United States Supreme Court as "freedom from bodily restraint and punishment." Id. at ¶14, citing *Ingraham v. Wright* (1977), 430 U.S. 651, 673-674. The court in *Hayden* reasoned that because the defendant there did not suffer any bodily restrain as a result of the registration requirement, nor was he punished, his complaint of the deprivation of a protected liberty interest was meritless.

{¶49} Mr. Petralia was granted a hearing to determine whether the Tier III classification was correctly applied to him. He is not entitled to any additional hearing beyond what the statute provides. The second assignment of error is overruled.

{¶50} For the foregoing reasons, we affirm the judgment of the Lake County Court of Common Pleas.

TIMOTHY P. CANNON, J., concurs in judgment only with Concurring Opinion.

DIANE V. GRENDELL, J., dissents with a Dissenting Opinion.

TIMOTHY P. CANNON, J., concurring in judgment only.

{¶51} Petralia had previously been adjudicated a sexual predator and, therefore, he did not have an expectation of finality in his prior adjudication. For the reasons stated in this court's opinion in *State v. Ettenger*, 11th Dist. No. 2008-L-054, 2009-Ohio-3525, at ¶56-59 & 84, the application of Ohio's Adam Walsh Act to Petralia is not unconstitutional. As stated in *Ettenger*, "a lifetime of reporting is a lifetime of reporting." Id. at ¶84.

{¶52} The judgment of the trial court should be affirmed.

DIANE V. GRENDELL, J., dissents with a Dissenting Opinion.

{¶53} Appellant, John J. Petralia's, reclassification as a Tier III Sex Offender pursuant to the Adam Walsh Act, unconstitutionally nullifies his prior classification in a final order of a court of competent jurisdiction as a sexual predator, in violation of the

doctrine of separation of powers. Accordingly, I respectfully dissent. Petralia's obligations to register as a sexual predator should continue as set forth in the September 7, 2000 Judgment Entry of the Lake County Court of Common Pleas.

{¶54} "It is well settled that the legislature has no right or power to invade the province of the judiciary, by annulling, setting aside, modifying, or impairing a final judgment previously rendered by a court of competent jurisdiction." *Cowen v. State ex rel. Donovan* (1920), 101 Ohio St. 387, 394; *Bartlett v. Ohio* (1905), 73 Ohio St. 54, 58 ("it is well settled that the legislature cannot annul, reverse or modify a judgment of a court already rendered"). This limit on the legislature's power is part of the separation of powers doctrine. "The administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers." *State ex rel. Johnston v. Taulbee* (1981), 66 Ohio St.2d 417, at paragraph one of the syllabus.

{¶55} In effect, the separation of powers doctrine applies the principle of res judicata, typically used as a bar to further litigation by parties, to legislative action. Cf. *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 1995-Ohio-331, at paragraph one of the syllabus ("[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action").

{¶56} In the present case, the trial court's September 7, 2000 Judgment Entry, finding that Petralia was a sexual predator and notifying him of his duty to register as a sexual predator, constituted such a final judgment. Once the period for appeal had passed, Petralia's classification became a settled judgment, which neither Petralia nor

the State could challenge. *Armstrong v. Marathon Oil Co.* (1990), 64 Ohio App.3d 753, 757 ("when a reviewable final determination has also become final in the sense that the time for review has expired, its effect cannot be challenged in a later appeal on another matter"). As such, Petralia had every reasonable expectation that his duty to register was fixed by that judgment entry.

{¶57} The majority states that "[a]pplication of this new law does not order the courts to reopen a final judgment, but instead simply changes the classification scheme." I disagree. "When retroactive legislation requires its own application in a case already finally adjudicated, it does no more and no less than 'reverse a determination once made, in a particular case.'" *Plaut v. Spendthrift Farm, Inc.* (1995), 514 U.S. 211, 225, quoting The Federalist No. 81 (J. Cooke ed. 1961), at 545.

{¶58} It is not disputed that the General Assembly has full authority to enact new laws and alter the classification of sexual offenders. The application of any new law to persons already classified as sexual offenders, whose judgments have become final, however, necessarily results in those prior final judicial decisions being re-opened, contrary to the principles of separation of powers and res judicata.

{¶59} The majority also emphasizes that the new registration scheme "is not punitive in nature, but rather civil and remedial." However, reliance upon the remedial nature of the legislation is misplaced. "The doctrine of *res judicata* *** applies equally to criminal and to civil litigation." *Akron v. Smith*, 9th Dist. Nos. 16436 and 16438, 1994 Ohio App. LEXIS 1859, at *4 (citation omitted).

{¶60} The General Assembly's stated purpose in enacting the Adam Walsh Act, "to provide increased protection and security for the state's residents from persons who

have been convicted of, or found to be delinquent children for committing, a sexually oriented offense or a child-victim oriented offense," is properly realized in its application to cases pending when enacted and those subsequently filed. Section 5, S.B. No. 10. Petralia's sentence, however, had become final prior to the Adam Walsh Act. As such, it is beyond the power of the Legislature to vacate or modify.[3] The United States Supreme Court has stated that the principle of separation of powers is violated by legislation which "depriv[es] judicial judgments of the conclusive effect that they had when they were announced" and "when an individual final judgment is legislatively rescinded for even the *very best* of reasons." *Plaut*, 514 U.S. at 228 (emphasis sic). To the extent the Adam Walsh Act attempts to modify existing final sentencing judgments, such as Petralia's sentence, it violates the doctrines of separation of powers and finality of judicial judgments, despite the good intentions of the Legislature. As such, that portion of the Act is invalid, unconstitutional, and unenforceable.

{¶61} For the foregoing reasons, I would reverse the decision of the court below and reinstate the trial court's September 7, 2000 Judgment Entry, requiring Petralia to register as a sexual predator.

3. Moreover, as a final judgment, Petralia's sentence also is beyond the authority of the courts to vacate or modify. *State v. Smith* (1989), 42 Ohio St.3d 60, at paragraph one of the syllabus; *Jurasek v. Gould Elecs., Inc.*, 11th Dist. No. 2001-L-007, 2002-Ohio-6260, at ¶15 (citations omitted).