

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
WARREN COUNTY

|                       |   |                        |
|-----------------------|---|------------------------|
| DONALD L. SEARLES,    | : |                        |
| Appellant-Petitioner, | : | CASE NO. CA2009-05-055 |
|                       | : |                        |
| - vs -                | : | <u>OPINION</u>         |
|                       | : | 9/8/2009               |
|                       | : |                        |
| STATE OF OHIO,        | : |                        |
| Appellee-Respondent.  | : |                        |

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS  
Case No. 08CV70271

Donald L. Searles, #A419-561, Lebanon Correctional Institution, P.O. Box 56, Lebanon, OH 45036-0056, appellant-petitioner, pro se

Rachel A. Hutzell, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, OH 45036, for appellee-respondent

**POWELL, P.J.**

{¶1} Petitioner-appellant, Donald L. Searles, appeals the decision of the Warren County Court of Common Pleas dismissing a petition contesting his sex offender reclassification. We affirm the trial court's decision.

{¶2} In May 2004, appellant was convicted in Morgan County for two counts of

unlawful sexual conduct with a minor in violation of R.C. 2907.04(A)(B)(3), a third-degree felony. Appellant was sentenced to serve a total of 10 years in prison and classified as a sexual predator. On November 30, 2007, appellant received a letter from the Ohio Attorney General informing him that he had been reclassified as a Tier III sexual offender as a result of the Ohio General Assembly's passage of Senate Bill 10, Ohio's Sex Offender Registration and Notification Act, also known as Ohio's Adam Walsh Act. On January 7, 2008, appellant filed a pro se "petition to challenge sex offender reclassification," in which he argued that his reclassification was unconstitutional. In a decision rendered on March 30, 2009, the trial court found Ohio's Adam Walsh Act constitutional and dismissed appellant's petition.<sup>1</sup>

{¶13} Appellant now appeals the trial court's decision to dismiss his petition, raising three assignments of error. For ease of discussion, appellant's assignments of error will be addressed together.

{¶14} Assignment of Error No. 1:

{¶15} "THE APPLICATION OF S.B. 10, OHIO'S ADAM WALSH ACT, TO AN OFFICER WHOSE CRIME OCCURRED BEFORE IT'S [sic] EFFECTIVE DATE VIOLATES EX POST FACTO CLAUSE OF THE UNITED STATES CONSTITUTION, AND THE RETROACTIVE LAW CLAUSE OF THE OHIO CONSTITUTION."

{¶16} Assignment of Error No. 2:

{¶17} "SENATE BILL 10'S 'TIER SYSTEM' OF CLASSIFICATION VIOLATES THE SEPARATION OF POWERS DOCTRINE."

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1. The trial court also found that appellant, instead of being reclassified as a Tier III sex offender, should have been reclassified as a Tier II sex offender. The trial court then ordered "the Attorney General to correct its records" to indicate that appellant "be required to register only as a Tier II offender for twenty-five

{¶8} Assignment of Error No. 3:

{¶9} "RETROACTIVE APPLICATION OF S.B. 10 VIOLATES THE PROCEDURAL DUE PROCESS PROTECTION OF THE UNITED STATES AND OHIO CONSTITUTION."

{¶10} On appeal, appellant argues that Ohio's Adam Walsh Act violates the Ex Post Facto Clause of the United States Constitution, the Retroactivity Clause of the Ohio Constitution, the Due Process Clauses of the United States and Ohio Constitutions, and the separation of powers requirement of the Ohio Constitution. This court has previously held that the law in Ohio's Adam Walsh Act does not violate the Ex Post Facto Clause of the United States Constitution, nor does it violate the Ohio Constitution's prohibition against retroactive laws. See *Sears v. State*, Clermont App. No. CA2008-07-068, 2009-Ohio-3541, ¶7; *State v. Bell*, Clermont App. No. CA2008-05-044, 2008-Ohio-2335, ¶104; *State v. Williams*, Warren App. No. CA2008-02-029, 2008-Ohio-6195, ¶36, ¶75; *Ritchie v. State*, Clermont App. No. CA2008-07-073, 2009-Ohio-1841, ¶16. Likewise, this court has held that Ohio's Adam Walsh Act does not violate the separation of powers requirement of the Ohio Constitution, nor does it violate appellant's due process rights of the United States and Ohio Constitutions. See *Sears* at ¶8; *Williams* at ¶97; *Ritchie* at ¶15; see, also, *Sewell v. State*, 181 Ohio App.3d 280, 2009-Ohio-872, ¶28-31; *Smallwood v. State*, Butler App. No. CA2009-01-057, 2009-Ohio-3682, ¶4; *Burchett v. State*, Richland App. No. 2008-CA-135, 2009-Ohio-4240, ¶25. As a result, appellant's assignments of error challenging the constitutionality of Ohio's Adam Walsh Act lack merit, and are overruled.

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(25) years registering with the Sheriff every six (6) months." Neither party challenges this finding on appeal.

{¶11} Judgment affirmed.

YOUNG, J., concurs

RINGLAND, J., concurs in part and dissents in part.

**RINGLAND, J., concurring in part and dissenting in part.**

{¶12} I respectfully dissent based upon my analysis in *Sears v. State*, Clermont App. No. CA2008-07-068, 2009-Ohio-3541, finding that the retroactive modification of judicially-determined sex offender classifications by the Adam Walsh Act violates the separation of powers doctrine. I concur with the majority's resolution of the remaining issues.