[Cite as *State v. Brownlee*, 2009-Ohio-5396.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY

STATE OF OHIO	:	
	:	Appellate Case No. 2008-CA-105
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2003-CR-260
v.	:	
	:	(Criminal Appeal from
JOHN FREDERICK BROWNLEE, JR.	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 9th day of October, 2009.

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STEPHEN K. HALLER, Atty. Reg. #0009172, by ELIZABETH A. ELLIS, Atty. Reg. #0074332, Greene County Prosecutor's Office, 61 Greene Street, Xenia, Ohio 45385
Attorney for Plaintiff-Appellee

KENNETH R. SHEETS, Atty. Reg. #0024049, 46 South Detroit Street, Xenia, Ohio 45385
Attorney for Defendant-Appellant

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BROGAN, J.

{¶ 1} John Frederick Brownlee, Jr. appeals from the trial court's judgment entry denying his motion for "declassification" as a registered sex offender.

{¶ 2} In his sole assignment of error, Brownlee contends the trial court erred in applying R.C. Chapter 2950, as amended by S.B. 10, and holding that he did not

satisfy its requirements for being removed from the sex offender registry.

{¶ 3} Brownlee raises two arguments in support. First, he claims the new sex offender legislation, which took effect in 2008, cannot be applied to him because he was sentenced in 2003. He insists that S.B. 10 is punitive and that its retroactive application would be unconstitutional. Second, he contends the trial court erred in finding that he failed to comply with R.C. 2950.15, which was enacted as part of S.B. 10 and allows Tier I sex offenders to seek termination of their registration requirements. Brownlee argues that the statute's requirements do not apply to him because he filed his motion under pre-S.B. 10 law.

{¶ 4} The record reflects that Brownlee was sentenced to community control and classified as a sexually oriented offender following his 2003 conviction on charges of importuning, attempted unlawful sexual conduct with a minor, pandering sexually oriented material involving a minor, and illegal use of a minor in nudity oriented material. Brownlee completed community control in 2007. He now lives in Pennsylvania, where he is registering as a sex offender under that state's law.

{¶ 5} In 2008, the Ohio legislature enacted S.B. 10, which created a new sex offender classification scheme. As part of the new system, sex offenders like Brownlee administratively were reclassified by the Ohio Attorney General's office as Tier I, II, or III offenders based strictly on the offenses they had committed. See, e.g., *State v. King*, Miami App. No. 08-CA-02, 2008-Ohio-2594, ¶2. Brownlee was not reclassified by the Ohio Attorney General as a Tier I, II, or III offender, apparently due to his move to Pennsylvania.

{¶ 6} In October 2008, Brownlee filed a "motion to declassify." He argued that

the requirements of R.C. 2950.15 did not apply to him because he had not been reclassified as a Tier I offender. Because he never had been reclassified under Ohio's tier system, Brownlee maintained that he was entitled to removal from Ohio's sex offender registry under the law that existed in 2003 when he was designated a sexually oriented offender. The trial court nevertheless applied R.C. 2950.15 to Brownlee's motion. It noted that the statute required a motion to include certain documentation. The trial court denied Brownlee's motion due to the absence of the required documentation. This timely appeal followed.

{¶ 7} As set forth above, Brownlee first argues that the S.B. 10 amendments to R.C. Chapter 2950 are punitive and that their retroactive application would be unconstitutional. We have ruled, however, that the S.B. 10 amendments to R.C. Chapter 2950 are civil, not criminal, and remedial, not punitive. The new legislation is not an ex post facto law and does not violate the prohibition against retroactive laws. *State v. Barker*, Montgomery App. No. 22963, 2009-Ohio-2774.

{¶ 8} With regard to Brownlee's second argument, we agree that the trial court should not have denied his motion for failure to provide the documentation required by R.C. 2950.15. On its face, the statute does not apply to him. It allows Tier I sex offenders to move for termination of their registration duties after ten years and requires various pieces of supporting documentation. Brownlee has not been reclassified under Ohio's new tier system at all because he is living in Pennsylvania. Moreover, if he were reclassified, he would be a Tier II offender by virtue of his convictions for attempted unlawful sexual conduct with a minor, pandering sexually oriented material involving a minor, and illegal use of a minor in nudity-oriented

material. See R.C. 2950.01(F)(1)(b) and (h); R.C. 2950.01(F)(1)(a); R.C. 2950.01(F)(1)(c). Because Brownlee is not, and will not be, a Tier I sex offender, the trial court should not have applied the documentation requirements of R.C. 2950.15 to his motion.[1]

{¶ 9} This does not mean, however, that reversal of the trial court's judgment is required. Although the trial court should not have denied Brownlee's motion for failure to comply with the documentation requirements of R.C. 2950.15, its error was harmless as a matter of law. The trial court should have denied the motion for a more fundamental reason: there is not, and has not been, a statutory mechanism for an offender such as Brownlee to be "declassified" as a registered sex offender. After S.B. 10, the available procedure is found in R.C. 2950.15, which applies to Tier I offenders. Prior to Brownlee's September 2003 convictions, a procedure existed for sexual predators to petition for removal of their sexual predator designation. By the time of Brownlee's convictions, the General Assembly had eliminated this provision though S.B. 5, effective July 31, 2003. See *State v. Leftridge*, 174 Ohio App.3d 314, 316, 2007-Ohio-6807. In particular, S.B. 5 amended R.C. 2950.09(D) by deleting language that authorized a petition to remove a sexual predator designation and adding language making clear that a sexual predator designation was permanent. *State v. Horch*, Union App. No. 14-07-47, 2008-Ohio-1484, ¶12.

{¶ 10} Although Brownlee was not designated a sexual predator, he seizes on

[1]On appeal, the State suggests that the trial court's error in this regard was "invited" by Brownlee. We disagree. In his motion, Brownlee stressed that he had not been reclassified under Ohio's tier system and asserted that "the provisions of the new R.C. 2950.15 do not apply to him." (Doc. #35 at 1).

the foregoing change made by S.B. 5 to argue that he was entitled to petition for declassification under the law that existed at the time of his convictions. He reasons:

{¶ 11} "The fact that the legislature explicitly provided that no sexual predator could be removed from the list, but failed to provide that any sexually oriented offender could not be removed from the list implies that they intended that sexually oriented offenders could be removed. This is further supported by the fact that the reclassification under the new law would permit removal from the list."

{¶ 12} Even assuming, purely arguendo, that Brownlee can avail himself of the law that existed at the time of his convictions, his analysis is unpersuasive. Prior to S.B. 10 and the exception for Tier I offenders in R.C. 2950.15, the Revised Code did not provide a way for *any* adult sex offender to seek early removal "from the list." Rather, for a period of time, it provided a way for sexual predators to seek removal of their sexual predator designation. Even if successful, however, these former sexual predators remained subject to the registration requirements applicable to sexually oriented offenders, who were required to register for ten years. *State v. Cook*, 83 Ohio St.3d 404, 422 n.6, 1998-Ohio-291. We are unconvinced that S.B. 5's act of making a sexual predator designation permanent implicitly was intended to allow sexually oriented offenders to seek early removal from the sex offender registry.

{¶ 13} In short, Brownlee is not entitled to declassification under R.C. 2950.15 because he is not a Tier I offender, and nothing in the law that existed prior to the S.B. 10 amendments to R.C. Chapter 2950 provided for adult sexually oriented offenders to be declassified before expiration of their ten-year registration term.

Accordingly, the trial court did not err in overruling Brownlee's motion for declassification. His assignment of error is overruled, and the judgment of the Greene County Common Pleas Court is affirmed.

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DONOVAN, P.J., and GRADY, J., concur.

Copies mailed to:

Stephen K. Haller
Elizabeth A. Ellis
Kenneth R. Sheets
Hon. Stephen Wolaver