

[Cite as *State v. Hunt*, 2010-Ohio-1126.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23256
v.	:	T.C. NO. 2008CV359
	:	
JEFFREY A. HUNT	:	(Civil appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	

**OPINION**

Rendered on the 19<sup>th</sup> day of March, 2010.

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FROELICH, J.

{¶ 1} Jeffrey A. Hunt appeals from a judgment of the Montgomery County Court of Common Pleas, which overruled his constitutional challenges to R.C. Chapter 2950, as amended by Senate Bill 10, and denied his petition to contest his reclassification under that statute. For the following reasons, the trial court's

judgment will be affirmed.

I

{¶ 2} In 1991, Hunt pled guilty to aggravated burglary and rape in the Muskingum County Court of Common Pleas. The court sentenced him to five to twenty-years in prison. Hunt acknowledges that he was later designated a sexually oriented offender under Ohio's Sex Offender Registration and Notification Act, R.C. Chapter 2950 ("SORN").

{¶ 3} In 2007, the General Assembly enacted Senate Bill 10 ("S.B.10") to implement the federal Adam Walsh Child Protection and Safety Act of 2006. Among other changes, S.B. 10 modified the classification scheme for offenders who are subject to the Act's registration and notification requirements. S.B. 10 created a three-tiered system, in which a sex offender's classification is determined based on the offense of which the offender was convicted.

{¶ 4} In accordance with S.B. 10, Hunt received a notice from the Ohio Attorney General, informing him of recent changes to SORN and that he had been reclassified as a Tier III sex offender. As a Tier III sex offender, Hunt is required to register with the local sheriff's office every 90 days for life and is subject to community notification. At the time Hunt received the notice, he resided in Montgomery County and registered in that county as a sexually oriented offender.

{¶ 5} On January 28, 2008, Hunt filed a petition to contest the application of S.B. 10. He argued that his reclassification was barred by the doctrines of res judicata and collateral estoppel and constituted a violation of the separation of powers doctrine. He also raised several constitutional challenges to S.B. 10,

including that retroactive application of S.B. 10 violates the prohibitions on ex post facto laws, retroactive laws, and double jeopardy and that the residency restrictions violate his right to due process. Hunt further argued that reclassification violates his right to contract and that he could not be subjected to community notification because he was not subject to community notification under SORN. Finally, Hunt asserted that he should have been classified as a Tier II offender. Hunt requested a hearing on his petition and a preliminary injunction enjoining implementation of S.B. 10. Hunt separately moved for immediate relief from community notification. Hunt subsequently withdrew his motion for a preliminary injunction, and the trial court later granted his motion for relief from community notification.

{¶ 6} On February 22, 2008, the trial court stayed Hunt's case pending a decision on similar cases in which constitutional challenges to S.B. 10 were raised. On October 7, 2008, the trial court overruled Hunt's constitutional challenges to S.B. 10. Relying upon *State v. Barker* (Aug. 29, 2008), Montgomery C.P. No. 91-CR-504, and *State v. Hoke* (Aug. 29, 2008), Montgomery C.P. No. 91-CR-2354, the trial court summarily concluded that (1) S.B. 10 is not an ex post facto law; (2) the statute's classification, registration, and notice requirements are not impermissibly retroactive; (3) S.B. 10's residency restrictions are unconstitutionally retroactive when applied to require an owner of residential property or a resident of such property, who owned or resided in the property before the enactment of the statute, to vacate the residence; (4) S.B. 10 does not implicate double jeopardy; (5) S.B. 10 does not violate the separation of powers doctrine; (6) S.B. 10 does not entail cruel and unusual punishment; (7) S.B. 10's residency restrictions, applied

prospectively, do not violate substantive due process; (8) S.B. 10's scheme does not violate procedural due process; and (9) the retroactive application of S.B. 10 does not constitute a breach of the petitioner's plea agreements. The court permitted the parties to provide supplemental memoranda on Hunt's res judicata argument. Hunt and the State both filed supplemental memoranda.

{¶ 7} On January 13, 2009, the trial court rejected Hunt's contention that reclassification was barred by res judicata and collateral estoppel. The court reasoned, in part: "At their essence, res judicata and collateral estoppel prohibit relitigation. The Petitioner's reclassification from a 'sexually oriented offender' to a 'Tier III offender' is not the result of relitigation; rather, it is the result of change of statutory law enacted by the Ohio Legislature. Therefore, the Court finds that reclassification under S.B. 10 does not violate the doctrines of res judicata and collateral estoppel." The court stated that, if Hunt still desired a hearing on his petition, Hunt must file a separate motion by January 30, 2009. Hunt did not request a hearing. Accordingly, on February 5, 2009, the trial court overruled Hunt's petition to contest his reclassification.

{¶ 8} Hunt appeals from the trial court's denial of his petition to contest his reclassification.

## II

{¶ 9} Hunt's sole assignment of error states:

{¶ 10} "THE RETROACTIVE APPLICATION OF SENATE BILL 10 VIOLATES THE EX POST FACTO, DUE PROCESS, AND DOUBLE JEOPARDY CLAUSES OF THE UNITED STATES CONSTITUTION AND THE

RETROACTIVITY CLAUSE OF SECTION 28, ARTICLE II OF THE OHIO CONSTITUTION. FIFTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION; SECTION 10, ARTICLE I OF THE UNITED STATES CONSTITUTION; AND SECTIONS 10 AND 28, ARTICLES I AND II, RESPECTIVELY, OF THE OHIO CONSTITUTION.”

{¶ 11} On appeal, Hunt claims that the trial court erred in concluding that S.B. 10 does not violate the separation of powers doctrine and is constitutional. He asserts that retroactive application of S.B. 10 is contrary to the Ex Post Facto Clause, the Retroactivity Clause, the Double Jeopardy Clause, and substantive due process. He further asserts that the application of S.B. 10 to him constitutes cruel and unusual punishment. In response, the State relies on the appellate brief that it filed in *State v. Barker*, Montgomery App. No. 22963.

{¶ 12} We have previously addressed and rejected each of Hunt’s arguments. In *State v. Desbiens*, Montgomery App. No. 22489, 2008-Ohio-3375, we held that S.B. 10 does not offend the Ex Post Facto Clause of the United States Constitution, because S.B. 10 is civil and non-punitive and the Ex Post Facto Clause applies only to criminal statutes. *Id.* at ¶30. We reiterated that holding in *State v. Moore*, Greene App. No. 07CA093, 2008-Ohio-6238, and further held that S.B. 10 does not violate the Retroactivity Clause of the Ohio Constitution. *Id.* at ¶28. Because S.B. 10 is civil and non-punitive, it likewise does not violate the Double Jeopardy Clause or constitute cruel and unusual punishment. *State v. Heys*, Miami App. No. 09-CA-04, 2009-Ohio-5397, ¶17.

{¶ 13} We addressed the separation of powers doctrine in *State v. Barker*,

Montgomery App. No. 22963, 2009-Ohio-2774. There, Barker claimed that the legislature had violated the separation of powers doctrine when it enacted S.B. 10 by unilaterally changing the sexual classification she received in 1997 under previous legislation. Barker argued that the trial court made a judicial determination when she was classified as a sexually oriented offender in 1997, and that the State, by applying the provisions of S.B. 10, unilaterally changed that result to a Tier III sex offender, with harsher registration and notification requirements. We rejected Barker's argument, reasoning, in part:

{¶ 14} “\*\*\* [T]he new Tier classifications under S.B. 10 operate as a matter of law, not by judicial determination. S.B. 10 abolished the former classifications of sexually oriented offenders, habitual sex offenders, or sexual predators. A legal designation of a ‘sexual predator,’ which previously required a hearing, no longer exists. See, e.g., *State v. Williams*, Warren App. No. 2008-02-029, 2008-Ohio-6195, ¶ 15. Rather, sex offenders are now classified within Tiers based solely on the offense of their conviction. *Id.*, ¶16, quoting *State v. Clay*, 177 Ohio App.3d 78, 893 N.E.2d 909, 2008-Ohio-2980.

{¶ 15} “S.B. 10 also provides for the reclassification of all offenders who were classified and still had duties under the former law when S.B. 10 came into effect. The act of reclassifying sex offenders does not encompass a judicial determination, but it is determined solely upon the offense for which the offender was convicted. Nor does it disturb a prior judicial determination. For example, a sex offender who received a sexual predator hearing where the judge judicially determined that there was a likelihood of recidivism and that the offender would

have to register every 90 days for life was automatically reclassified to a Tier III offender, which contains the same registration requirements as before.”

{¶ 16} Finally, we have rejected Hunt’s claim that S.B. 10 violates his right to substantive due process, because his property interest is hindered by the residency requirements. We noted, initially, that an individual must actually suffer a deprivation of property rights in order to have standing to challenge the constitutionality of the residency restriction. *Heys* at ¶14; *State v. Hall*, Montgomery App. No. 22969, 2009-Ohio-3020, ¶16-17. Because Hunt has not alleged, much less established, that he has been deprived of his property rights, he lacks standing to challenge the residency restrictions. However, even if Hunt had standing, we have previously rejected his assertion that the residency restrictions impose an unconstitutional restraint and infringe on a fundamental right. *State v. King*, Miami App. No. 08-CA-02, 2008-Ohio-2594, ¶16; *Hall* at ¶20-22.

{¶ 17} Based on our respect for stare decisis and our prior opinions holding S.B. 10 to be constitutional, Hunt’s assignment of error is overruled.

### III

{¶ 18} The trial court’s judgment will be affirmed.

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FAIN, J. and GRADY, J., concur.

Copies mailed to:

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