

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

STATE OF OHIO

Plaintiff-Appellee

**V.**

DONALD F. SCOTT

## Defendant-Appellant

Appellate Case No. 23565

Trial Court Case No. 09-CR-1559

(Criminal Appeal from  
Common Pleas Court)

## OPINION

Rendered on the 20<sup>th</sup> day of July, 2010.

MATHIAS H. HECK, JR., by JOHNNA M. SHIA, Atty. Reg. #0067685, Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45422  
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BROGAN, J.

{¶ 1} Donald Scott appeals from his conviction on July 2, 2009, of failure to notify in violation of R.C. 2950.05(A) and, in particular, the “reclassification” consequences of that conviction. Scott pleaded guilty to that offense, but now raises constitutional objections to registration and residency requirements of Senate

Bill 10 ("S.B. 10") made applicable to him.

{¶ 2} The facts underlying his appeal are not in dispute. They are set out in the State's brief as follows:

{¶ 3} Scott's initial duty to register was a result of a February 23, 1996, conviction for a lewd, lascivious offense in Case No. 95-02997 in the Circuit Court of Leon County, Florida, a felony of the second degree in Florida. (Tr. 6) Scott then moved to Ohio, where he registered an address with the Montgomery County Sheriff's Office. (Id.) In March 2009, Scott failed to notify the sheriff of a change in his address. In May 2009, Scott was indicted for failure to notify in violation of R.C. 2950.05(A). After Scott pleaded guilty to the offense, the trial court sentenced him to community control sanctions and classified him as a Tier II offender.

{¶ 4} Scott was classified as a Tier II offender by the trial court and notified he would have to verify his residence every 180 days for 25 years and notify the Sheriff of any changes during that time.

{¶ 5} In his assignments of error, Scott raises several constitutional challenges to Senate Bill 10. He contends the legislation (1) violates the ex post facto clause; (2) violates the prohibition on retroactive laws; (3) violates the separation of powers doctrine; (4) violates the double jeopardy clause; and (5) the residence restriction violates the due process clause.

{¶ 6} This Court has addressed the arguments made in Scott's assignments in *State v. Moore*, 2<sup>nd</sup> Dist. No. 07-CA-93, 2008-Ohio-6238, where we held that S.B. 10 is civil and remedial in purpose and effect, citing, *State v. King*, Miami App. No. 08-CA-02, 2008-Ohio-2594. In *State v. Desbiens*, 2<sup>nd</sup> Dist. No. 22489,

2008-Ohio-3375, we held that Chapter 2950 does not offend the Ex Post Facto Clause, Substantive or Procedural Due Process, nor is it overbroad. In *State v. Barker*, 2<sup>nd</sup> Dist. No. 22963, 2009-Ohio-2774, we held that the registration and notification requirements in R.C. Chapter 2950 do not violate the double jeopardy, ex-post facto, retroactivity or separation of powers clauses. In *State v. Heys*, 2<sup>nd</sup> Dist. No. 09-CA-04, 2009-Ohio-5397, we held that S.B. 10 does not violate the non-delegation doctrine, substantive (property interest) and procedural due process (liberty interest), the commerce clause, separation of powers, double jeopardy, cruel and unusual punishment clause, the purposes of felony sentencing, the Sixth Amendment right to a jury trial, or the First Amendment for overbreadth or vagueness.

{¶ 7} Recently, the Ohio Supreme Court in *State v. Bodyke*, \_\_\_ Ohio St.3d \_\_\_, 2010-Ohio-2424, held as unconstitutional two sections of the Adam Walsh Act that authorized the Ohio Attorney General to “reclassify” sex offenders who had already been classified by judges under a previous version of the law, “Megan’s Law.” The court held these provisions violated the separation of powers doctrine of the Ohio Constitution. Scott, however, was not reclassified by the Attorney General. He was classified as a Tier II offender by the trial court.

{¶ 8} The appellant’s assignments of error are overruled. The judgment of the trial court is Affirmed.

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GRADY and FROELICH, JJ., concur.

Copies mailed to:

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Hon. Michael Tucker