

[Cite as *State v. Trent*, 2009-Ohio-3923.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : Case No. 08CA3079
 :
 vs. :
 :
 ROBERT J. TRENT, : DECISION AND JUDGMENT ENTRY
 :
 :
 Defendant-Appellant. :

APPEARANCES:

COUNSEL FOR APPELLANT: Robert J. Trent, No. 506-519, Ross Correctional
Institute, P.O. Box 7010, Chillicothe, Ohio 45601, Pro
Se

COUNSEL FOR APPELLEE: Michael M. Ater, Ross County Prosecuting Attorney,
and Jeffrey C. Marks, Ross County Assistant
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CIVIL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 7-30-09

ABELE, J.

{¶ 1} This is an appeal from a Ross County Common Pleas Court judgment that denied a challenge by Robert J. Trent, petitioner below and appellant herein, to his reclassification as a Tier III sexual offender.

{¶ 2} Appellant assigns the following errors for review:

FIRST ASSIGNMENT OF ERROR:

“THE COURT ERRONEOUSLY RULED THAT THE PETITIONER HAD FAILED TO PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE NEW REGISTRATION REQUIREMENTS SET FORTH IN THE NOTICE WHICH THE PETITIONER RECEIVED FROM THE OHIO ATTORNEY GENERAL INCORRECTLY APPLIED TO THE PETITIONER OF THAT THE NEWLY REQUIRED REGISTRATION APPLIED TO THE PETITIONER AT ALL.”

SECOND ASSIGNMENT OF ERROR:

“THE COURT ERRONEOUSLY RULED THAT THE REVISED VERSION OF THE OHIO REVISED CODE ARE [sic] CONSTITUTIONAL AND NOT IN VIOLATION OF EX POST FACTO, DUE PROCESS, EQUAL PROTECTION, DOUBLE JEOPARDY, SEPARATION OF POWERS CLAUSES AS WELL AS SECTION 28, ARTICLE II OF THE OHIO CONSTITUTION WHICH PROHIBITS RETROACTIVE LAWS.”

THIRD ASSIGNMENT OF ERROR:

“THE COURT ERRONEOUSLY RULED THAT THE PROVISIONS SET FORTH WITHIN THE NEW REGISTRATION REQUIREMENTS ARE CIVIL IN NATURE INSTEAD OF A CRIMINAL ACTION AND THEREFORE NOT PUNITIVE NOR ADDING ANY ADDITIONAL PUNISHMENTS UPON PETITIONER.”

FOURTH ASSIGNMENT OF ERROR:

“THE COURT ERRONEOUSLY ENTERTAINED JURISDICTION OVER THE PETITIONER’S PREVIOUS CRIMINAL CONVICTION AND SENTENCE WITHOUT HAVING A VOIDED JUDGMENT FROM THE ORIGINAL SENTENCING COURT.”

FIFTH ASSIGNMENT OF ERROR:

“THE COURT ERRONEOUSLY IMPOSED ADDITIONAL BURDENS WITHOUT REQUIRING THE STATE TO PROVE IT’S CASE BEYOND A REASONABLE DOUBT TO A JURY OF PETITIONER’S PEERS INSTEAD OF PLACING THE BURDEN OF PROOF UPON THE PETITIONER.”

{¶ 3} Appellant was convicted of rape, ten counts of sexual battery, and four counts of corrupting another person with drugs. His conviction was affirmed in State v. Trent, Licking App. No. 05CA101, 2006-Ohio-3132. The appeal was later reopened to raise a sentencing issue, but in the end, his sentence was upheld. State v. Trent, Licking App. No. 05CA101, 2008-Ohio-898. In January 2008, appellant received notice of re-classification to a Tier III Sex Offender under the new provisions as part of Ohio's "Adam Walsh Child Protection and Safety Act" (AWA), Am.Sub.S.B. 10, 2007 Ohio Laws, File No. 10.¹ Appellant commenced the instant action and challenged the re-classification on various grounds. A hearing was apparently held, but no transcript of that proceeding is contained in the record. The trial court found no merit in his arguments and denied the petition. This appeal followed.

I

{¶ 4} We first proceed, out of order, to appellant's fourth assignment of error wherein he argues that the trial court erroneously exercised jurisdiction over him. First, appellant invoked the trial court's jurisdiction by filing his petition. He cannot now complain about an action that he himself initiated. Second, insofar as his classification as a Tier III sexual offender, this was not done by the trial court, but rather by the Ohio Attorney General under order of the Ohio General Assembly. See R.C. 2950.032(A)(1)(a). Thus, appellant's fourth assignment of error is without merit and is hereby overruled.

II

¹ The record is not clear as to appellant's previous sexual offender classification.

{¶ 5} We next turn to appellant's fifth assignment of error wherein he argues that the trial court erroneously placed the burden of proof for this proceeding on him rather than the State. Because appellant filed the challenge to the reclassification, however, he had the burden of proof. See State v. Pletcher, Ross App. No. 08CA3044, 2009-Ohio-1819, at ¶25. Thus, the fifth assignment of error is without merit and is hereby overruled.

III

{¶ 6} We now turn to appellant's first assignment of error wherein he posits that the trial court erred by determining that the AWA applies to him. Because appellant includes a single, lengthy argument for all five assignments of error, the gist of this particular argument is difficult to discern.² To the extent that appellant argues that the trial court erred in ruling on the various constitutional issues he raised, we will address that in our review of his second and third assignments of error and need

{¶ 7} not repeat it here. To the extent appellant argues that the court erred in ruling on some factual point, he has not included a transcript and we must, therefore, presume the correctness of that proceeding. State v. Hundzsa, Portage App. No. 2008-P-12, 2008-Ohio-4985, at ¶41; State v. Lewis, Adams App. No. 02CA734, 2003-Ohio-1006, at ¶¶11-12. Thus, for these reasons, the assignment of error is without merit and is hereby overruled.

² A single argument for five assignments of error violates App.R. 16(A)(7), which requires separate arguments for each assignment of error. We would be within our authority to summarily disregard all five. See App.R. 12(A)(2), State v. Colley, Scioto App. No. 06CA3095, 2007-Ohio-6478, at ¶6 State v. Caldwell (1992), 79 Ohio App.3d 667, 677, 607 N.E.2d 1096, at fn. 3; State v. Houseman (1990), 70 Ohio App.3d 499,

IV

{¶ 8} We jointly consider appellant's second and third assignments of error that raise a number of related constitutional issues (in the order that he raises them): (1) the AWA is not a violation of the federal constitutional ban on ex post facto laws, State v. Gallagher, Coshocton App. No. 08CA22, 2009-Ohio-2470, at ¶10; Gildersleeve v. State, Cuyahoga App. Nos. 91515, 91519, 91521 & 91532, 2009-Ohio-2031, at ¶¶17-33; Montgomery v. Leffler, Montgomery App. No. H-08-011, 2008-Ohio-6397, at ¶¶18-24; (2) we decline to address the Due Process argument because we are not sure what it is and, in any event, appellant has not demonstrated an actual deprivation of Due Process, see State v. Coburn, Ross App. No. 08CA3062, 2009-Ohio-632, at ¶25; (3) the AWA does not violate his equal protection rights because (a) sex offenders are not a suspect class, and (b) its provisions are rationally related to a legitimate government interest, see Montgomery v. Leffler, Huron App. No. H-08-11, 2008-Ohio-6397, at ¶35; (4) reclassification under the AWA does not violate the Double Jeopardy Clause because it is not a punitive measure, State v. Hughes, Coshocton App. No. 2008-CA-23, 2009-Ohio-2406, at ¶20; Brooks v. State, Lorain App. No. 08CA9452, 2009-Ohio-1825, at ¶25; and (5) the AWA does not violate either the "separation of powers" doctrine, State v. Gallagher, Coshocton App. No. 08CA22, 2009-Ohio-2470, at ¶¶7-13; In re Adrian R., Licking App. No. 08CA17, 2008-Ohio-6581, at ¶34, or the Ohio Constitutional ban on retroactive laws, Coburn, supra at ¶¶8-12; State v. Messer, Ross App. No. 08CA3050, 2009-Ohio-312, at ¶¶7-13; State v. Linville, Ross App. No. 08CA3051, 2009-Ohio-313,

at ¶¶7-12.

{¶ 9} Appellant also contends that the trial court erred finding these AWA reclassification proceedings to be civil in nature rather than criminal. We disagree. As we note in our resolution of his Double Jeopardy argument, reclassification is not punitive. Instead, it is remedial and the proceedings are, therefore, civil rather than criminal. See Gildersleeve, supra at ¶¶26-33; Sigler v. State, Richland App. No. 08CA79, 2009-Ohio-2010, at ¶¶15-18. For these reasons, we find no merit in the second and third assignments of error and they are hereby overruled.

{¶ 10} Having considered all of the errors assigned by appellant and argued in his brief, and after finding merit in none of them, the judgment of the trial court is hereby affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Kline, P.J. & McFarland, J.: Concur in Judgment & Opinion

For the Court

Peter B. Abele, Judge BY: _____

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.