

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

Danny Thompson II,	:	
	:	
Petitioner-Appellant,	:	Case No. 09CA22
	:	
v.	:	
	:	
State of Ohio,	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
	:	
Respondent-Appellee.	:	File-stamped date: 11-30-09

APPEARANCES:

Danny Thompson II, pro se, for Appellant.

James E. Schneider, Washington County Prosecutor, and Alison L. Cauthorn, Washington County Assistant Prosecutor, Marietta, Ohio, for Appellee.

Kline, P.J.:

{¶1} Danny Thompson II (hereinafter “Thompson”) appeals the judgment of the Washington County Court of Common Pleas. The trial court granted the state’s motion for summary judgment after Thompson filed an action for declaratory judgment and injunctive relief related to R.C. Chapter 2950, as amended by Senate Bill 10 (hereinafter “S.B. 10”). On appeal, Thompson contends that he was entitled to the appointment of counsel in the proceeding below. We disagree. S.B. 10 is civil in nature, and there is no right to appointed counsel in civil actions. Next, Thompson contends that the application of S.B. 10 violates several constitutional provisions. We disagree. This court has repeatedly rejected all of Thompson’s various arguments, and we find no reason

to reassess our determinations at this time. Accordingly, because the state is entitled to judgment as a matter of law, we affirm the judgment of the trial court.

I.

{¶2} On November 14, 2008, Thompson filed a pro se complaint for declaratory judgment and injunctive relief in the Washington County Court of Common Pleas. Thompson's complaint makes the following claims: that (1) Thompson was classified as a sexually oriented offender under the previous sex offender registration law; (2) in late 2007, Thompson received a notice about his sex offender status from the Ohio Attorney General; and (3) according to that notice, Thompson would be reclassified as a Tier II sex offender pursuant to S.B. 10. (The record in this case does not contain a copy of the Attorney General's reclassification notice or any information about Thompson's underlying crime.) Thompson listed the Chillicothe Correctional Institution as his address.

{¶3} Thompson's complaint (1) asked the court to find S.B. 10 unconstitutional for various reasons and (2) prayed for the following relief:

{¶4} "A. * * * Thompson respectfully requests that this Court hold that the State's attempt to reclassify him under [S.B. 10] is unconstitutional.

{¶5} B. * * * Thompson respectfully requests that this Court hold that the residency restriction in R.C. 2950.034 is unconstitutional and cannot be applied against him.

{¶6} C. * * * Thompson respectfully requests an order that he is not subject to community notification requirements of R.C. 2950.11."

{¶7} It is not clear whether Thompson ever requested a reclassification hearing pursuant to R.C. 2950.031(E).

{¶8} The state filed a motion for summary judgment, which the trial court granted. In its decision, the trial court noted that “[i]t has already been held by the courts of appeals across the State of Ohio that [S.B. 10] is constitutional.”

{¶9} Thompson appeals, asserting the following six assignments of error: I. “An indigent appellant is entitled to court appointed counsel in a S.B. 10 reclassification hearing.” II. “Applying S.B. 10 to offenders whose crime occurred before its effective date violates the Ex Post Facto Clause of the United States Constitution.” III. “Applying S.B. 10 to offenders whose crimes occurred before its effective date violates the retroactivity clause of the Ohio Constitution.” IV. “Applying S.B. 10 to offenders who were classified under Megan’s Law effectively vacates valid judicial orders, and violates the Separation of Powers Doctrine embodied in the Ohio Constitution.” V. “Applying S.. 10 [sic] to offender who have [sic] previously been sentenced for sex offenses violates the Double Jeopardy Clauses of the Ohio and United States Constitutions.” And, VI. “Applying S.B. 10 to offenders violates the Due Process Clauses of the Ohio and United States Constitution [sic].”

II.

{¶10} Each of Thompson’s six assignments of error touch upon constitutional issues related to S.B. 10. Therefore, we will address all of Thompson’s assignments of error together. First, Thompson contends that, for constitutional reasons, he was entitled to counsel in the proceeding below.

Thompson also contends that the application of S.B. 10 violates several constitutional provisions. See, generally, *State v. Pletcher*, Ross App. No. 08CA3044, 2009-Ohio-1819, at ¶¶6-8 (discussing the changes to R.C. Chapter 2950 under S.B. 10).

A. Standard of Review

{¶11} “Because this case was decided upon summary judgment, we review this matter de novo, governed by the standard set forth in Civ.R. 56.” *Comer v. Risko*, 106 Ohio St.3d 185, 2005-Ohio-4559, at ¶8. See, generally, *Grimes v. Grimes*, Washington App. No. 08CA35, 2009-Ohio-3126, at ¶¶13-16 (discussing the standard of review for cases decided upon summary judgment). Further, Thompson’s arguments about the constitutionality of S.B. 10 are legal questions that we also review de novo. See *State v. Mollohan*, Washington App. No. 09CA3, 2009-Ohio-5133, at ¶6; *State v. Day*, Adams App. Nos. 08CA865 & 08CA866, 2009-Ohio-3755, at ¶26.

{¶12} Statutes enacted in Ohio, including S.B. 10, are “presumed to be constitutional.” *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, at ¶12, citing *State ex rel. Jackman v. Cuyahoga Cty. Court of Common Pleas* (1967), 9 Ohio St.2d 159, 161. This presumption remains unless Thompson can establish, “beyond reasonable doubt, that the statute is unconstitutional.” *Ferguson* at ¶12, citing *Roosevelt Properties Co. v. Kinney* (1984), 12 Ohio St.3d 7, 13.

A. The Appointment of Counsel

{¶13} Thompson’s first assignment of error states that “[a]n indigent appellant is entitled to court appointed counsel in a S.B. 10 reclassification

hearing.” Despite the language used here, we note that the proceeding below was not a reclassification hearing pursuant to R.C. 2950.031(E). Rather, in this case, Thompson filed a complaint for declaratory judgment and injunctive relief. Furthermore, it does not appear as though Thompson requested the appointment of counsel in the present case. Nevertheless, Thompson contends that he was entitled to counsel for the following reasons: (1) “S.B. 10 imposes criminal punishment triggering [Thompson’s] Sixth Amendment Constitutional right to counsel”; (2) Thompson “has a substantive due process right to counsel because the state of Ohio is depriving him of a substantial liberty interest”; and (3) Thompson “has a Fourteenth Amendment right to counsel rooted in the due process and equal protection clause[s.]”

{¶14} Here, we find no merit in Thompson’s arguments regarding the appointment of counsel. First, this case involves a civil complaint, and there is “no generalized right to appointed counsel in civil actions.” *State v. Messer*, Ross App. No. 08CA3050, 2009-Ohio-312, at ¶15 (internal quotation omitted). Furthermore, we have consistently held that S.B. 10 is “civil in nature.” *Id.*; *In re T.M.*, Adams App. No. 08CA863, 2009-Ohio-4224, at ¶28; *State v. Coburn*, Ross App. No. 08CA3062, 2009-Ohio-632, at ¶12.

{¶15} Finally, this court has rejected all of Thompson’s arguments in two recent cases. See *State v. Linville*, Ross App. No. 08CA3051, 2009-Ohio-313, at ¶13-17; *Messer* at ¶14-18. See, also, *State v. Case*, Huron App. No. H-08-009, 2009-Ohio-2923, at ¶18-19; *State v. King*, Miami App. No. 08-CA-02, 2008-Ohio-2594, at ¶4, fn. 1. But, see, *State v. Strickland*, Lake App. No. 2008-

L-034, 2009-Ohio-5424, at ¶73-75. After reviewing Thompson's arguments, we find no reason to reassess our recent holdings in *Messer* and *Linville*. Thus, Thompson's arguments would fail even if (1) he had requested the appointment of counsel and (2) the proceeding below was a reclassification hearing pursuant to R.C. 2950.031(E).

{¶16} Accordingly, for the foregoing reasons, we overrule Thompson's first assignment of error.

B. Thompson's Constitutional Challenges to S.B. 10

{¶17} Thompson's remaining assignments of error have no merit because we have rejected his various constitutional challenges in numerous cases. See, e.g., *Mollohan* at ¶8; *State v. Howard*, Ross App. No. 08CA3086, 2009-Ohio-4496, at ¶6; *Day* at ¶28. We have found that S.B. 10 does not violate (1) the United States Constitution's prohibition on ex post facto laws or the Ohio Constitution's prohibition on retroactive laws; see, e.g., *Coburn* at ¶8-13; *State v. Randlett*, Ross App. No. 08CA3046, 2009-Ohio-112, at ¶8-15; *Linville* at ¶7-12; *Messer* at ¶7-13; (2) the separation of powers doctrine inherent in Ohio's Constitution; see, e.g., *Coburn* at ¶14-20; *Randlett* at ¶16-23; *Linville* at ¶19-27; *Messer* at ¶ 20-28; or (3) the prohibition against double jeopardy; see, e.g., *Pletcher* at ¶14-16; *Messer* at ¶29-31; *Randlett* at ¶24-27. After reviewing Thompson's arguments, we find no reason to reassess our determinations at this time.

{¶18} Further, Thompson argues that the residency restrictions set forth in S.B. 10 violate his right to due process. However, Thompson has failed

to show that he has standing to assert this argument or that this argument is ripe for review.

{¶19} Here, Thompson is currently incarcerated by the state of Ohio. This court has held that, “where the offender does not presently claim to reside ‘within 1,000 feet of a school, or that he was forced to move from an area because of his proximity to a school[,]’ the offender ‘lacks standing to challenge the constitutionality’ of the residency restrictions.” *Messer* at ¶36, quoting *State v. Peak*, Cuyahoga App. No. 90255, 2008-Ohio-3448, at ¶8-9; *Howard* at ¶8; *Day* at ¶30; *Linville* at ¶35. See, also, *State v. Pierce*, Cuyahoga App. No. 88470, 2007-Ohio-3665, at ¶33.

{¶20} Moreover, because Thompson is currently in prison, he is not presently subject to the residency restrictions. Therefore, the residency restrictions have inflicted no actual harm upon Thompson. See *Messer* at ¶37; *State v. Freer*, Cuyahoga App. No. 89392, 2008-Ohio-1257, at ¶29-30. As we have in similar cases, we choose to dismiss Thompson’s due process challenge because this issue is not ripe for review. See *Day* at ¶31; *Messer* at ¶37; *Linville* at ¶36-37. Thus, Thompson has failed to show that he has standing to assert this argument or that this argument is ripe for review.

{¶21} For the foregoing reasons, we find that the state is entitled to judgment as a matter of law. Accordingly, we also overrule Thompson’s second, third, fourth, fifth, and sixth assignments of error. Having overruled all of Thompson’s assignments of error, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and Appellant pay the 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 Washington County Court of Common Pleas to carry this judgment into execution.

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

Harsha, J. and Abele, J.: Concur in Judgment Only.

For the Court

BY: _____
Roger L. Kline, Presiding Judge

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.