

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ROBERT L. BIGGS	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
	:	Hon. William B. Hoffman, J.
Petitioner-Appellee	:	Hon. Sheila G. Farmer J.
	:	
-VS-	:	
	:	Case No. 08-CA-224
STATE OF OHIO	:	
	:	
Respondent-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Civil appeal from the Richland County Court of Common Pleas, Case No. 08-CV-357D

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: July 9, 2009

APPEARANCES:

For Petitioner-Appellee

For Respondent-Appellant

ROBERT L. BIGGS PRO SE
IM # A508039
Toledo Correctional Institute
2001 East Central Ave
Toledo, OH 43608

FRANK ARDIS, JR.
KIRSTEN PSCHOLKA-GARTNER
Richland County Prosecutor's Office
38 South Park
Mansfield, OH 44902

Gwin, P.J.

{¶1} Respondent-appellant the State of Ohio appeals a judgment of the Court of Common Pleas of Richland County, Ohio, which found Senate Bill 10, Ohio's Sexual Offender classification and registration scheme, to be unconstitutional in its entirety. Petitioner-appellee is Robert L. Biggs. Appellant assigns four errors to the trial court:

{¶2} "I. WHETHER BEYOND A REASONABKE [SIC] DOUBT, SENATE BILL 10 AND THE CONSTITUTIONAL PROVISIONS CITED BY THE TRIAL COURT ARE CLEARLY INCOMPATIBLE, AND WHETHER THERE IS NO SET OF CIRCUMSTANCES UNDER WHICH THE SENATE BILL 10 WOULD BE VALID. THE TRIAL COURT PURPORTED TO INVALIDATE THE LEGISLATION, RATHER THAN THE STATUTORY PROVISIONS ACTUALLY AT ISSUE IN THIS MATTER. HENCE, BY INVALIDATING THE "ADAM WALSH ACT," THE COURT APPARENTLY PURPORTED TO INVALIDATE EVERY STATUTE [SIC] AMENDED BY THE SB 10, DESPITE THE NARROW CLAIM BEFORE IT. THE COURT BELOW DID NOT PROPERLY APPLY, OR SUBSTANTIATE DIVERGENCE FROM, THE PRESUMPTION OF CONSTITUTIONALITY.

{¶3} "II. WHETHER SENATE BILL 10'S LEGISLATIVE ADJUSTMENT TO THE FREQUENCY AND DURATION OF APPELLE'S [SIC] PREEXISTING DUTY TO REGISTER RENDERED THE STATUTE UNCONSTITUTIONALLY RETROACTIVE. A STATUTE FOUND TO BE RETROACTIVE IS ONLY UNCONSTITUTIONAL IF IT SIGNIFICANTLY BURDENS A VESTED SUBSTANTIVE RIGHT, BUT NOT IF IT IS REMEDIAL. AS THE OHIO SUPREME COURT HAS CONSISTENTLY HELD UNDER THE STATUTORY FRAMEWORK AMENDED BY THE SENATE BILL 10, THAT

FRAMEWORK IS REMEDIAL IN NATURE. THE GENERAL ASSEMBLY EXPRESSED ITS INTENT THAT R.C. CHAPTER 2950, AS AMENDED, REMAIN REMEDIAL IN NATURE.

{¶4} “III. WHETHER SENATE BILL 10’S ADJUSTMENT TO THE FREQUENCY AND DURATION OF APPELLEE’S PRE-EXISTING DUTY TO REGISTER CONSTITUTED SUCCESSIVE PUNISHMENT IN VIOLATION OF THE *EX POST FACTO* CLAUSE. IT WAS, INSTEAD, A REMEDIAL, CIVIL STATUTE THAT DID NOT IMPACT OFFENDERS’ SENTENCES FOR THE CRIMES THEY COMMITTED.

{¶5} “IV. WHETHER A PLEA AGREEMENT BETWEEN AN OFFENDER AND THE PROSECUTING ATTORNEY CREATED A VESTED, SETTLED EXPECTATION THAT THE OFFENDER’S CLASSIFICATION WOULD NEVER CHANGE. THE CLASSIFICATIONS OF SB 10, AND PRIOR CLASSIFICATIONS IMPOSED PURSUANT TO STATUTE BY THE COURT, DO NOT, AND DID NOT, CREATE THE EXPECTATION THAT CONVICTED SEX OFFENDERS WOULD NEVER AGAIN BE THE SUBJECT OF LEGISLATIVE ACTION.”

{¶6} Appellee was convicted of gross sexual imposition in the Franklin County Court of Common Pleas in 2006. Appellee alleges as part of a plea bargain, he was to be classified a sexually oriented offender and required to register for five years.

{¶7} Appellee received a notice of new classification and registration duties under R.C. 2950.01 et seq., as amended by Senate Bill 10, also known as the “Adam Walsh Act”. The statute as amended was effective July 1, 2007, after appellee’s conviction and sentencing. Appellee contested the reclassification, asserting the new legislation violates several provisions of the Ohio and United States Constitutions, and

imposes new obligations and additional substantial burdens on him. He also alleged the change in registry requirements directly violates his original plea agreement.

{¶8} The trial court found Senate Bill 10 is unconstitutional both facially and as applied to appellee because it violates the prohibitions against both retroactive and ex post facto laws. The trial court cited its decision in *Sigler v. State*, Richland Common Pleas Case No. 07CV1863, and granted judgment in favor of appellee.

{¶9} The State of Ohio appealed the matter to this court.

I, II, III, & IV

{¶10} In each assignment of error, appellant argues the trial court erred in finding Senate Bill 10 to be unconstitutional on multiple grounds. We agree.

{¶11} The court cited its decision in *Sigler*, supra, wherein it found Senate Bill 10 unconstitutional. However, this court has since reversed the court's decision. *Sigler v. State*, Richland App. No. 08-CA-79, 2009-Ohio-2010. In *Sigler*, we found, as courts across Ohio have repeatedly held, Senate Bill 10 is constitutional and does not violate prohibitions against retroactive or ex post facto laws. *Id.* at paragraph 89.

{¶12} In accord with our previous holding in *Sigler*, each of appellant's assignments of error is sustained.

{¶13} For the foregoing reasons, the judgment of the Court of Common Pleas, Richland County, Ohio, is reversed, and the cause is remanded to the court for further proceedings in accord with law and consistent with this opinion.

By Gwin, P.J.,

Hoffman, J., and

Farmer, J., concur

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

HON. SHEILA G. FARMER

WSG:clw 0701

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO

FIFTH APPELLATE DISTRICT

ROBERT L. BIGGS

Petitioner-Appellee

-VS-

STATE OF OHIO

Respondent-Appellant

JUDGMENT ENTRY

CASE NO. 08-CA-224

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas, Richland County, Ohio, is reversed, and the cause is remanded to the court for further proceedings in accord with law and consistent with this opinion. Costs to appellee.

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

HON. SHEILA G. FARMER