

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CLIFFORD J. CULGAN	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
	:	Hon. W. Scott Gwin, J.
Petitioner-Appellee	:	Hon. William B. Hoffman, J.
	:	
-vs-	:	
	:	Case No. 08-CA-217
STATE OF OHIO	:	
	:	
Respondent-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil appeal from the Richland County Court of Common Pleas, Case No. 08-CV-342 D

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: July 21, 2009

APPEARANCES:

For Petitioner-Appellee

For Respondent-Appellant

CLIFFORD J. CULGAN PRO SE
I/M #433-129
Mansfield Correctional Institution
P.O.Box 788
Mansfield OH 44901

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 Clifford J. Culgan. 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 NT 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 corrupting another with drugs in violation of R.C. 2925.02, two counts of unlawful sexual conduct with a minor in violation of R.C. 2907.04, and attempted pandering obscenity involving a minor in violation of R.C. 2923.02 in Medina County Court of Common Pleas in 2002. The record before us is unclear as to whether the convictions were a result of a plea agreement.

{¶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.

{¶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} Because the record is unclear whether the convictions were the result of a plea agreement, certain of appellant's arguments may not apply here. However, we find the prior classification scheme did not create the expectation that appellee would never be subject to further legislative action.

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

{¶14} 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, .J.,

Farmer, P.J., and

Hoffman, J., concur

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. WILLIAM B. HOFFMAN

WSG:clw 0717

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO

FIFTH APPELLATE DISTRICT

CLIFFORD J. CULGAN

Petitioner-Appellee

-VS-

STATE OF OHIO

Respondent-Appellant

JUDGMENT ENTRY

CASE NO. 08-CA-217

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. SHEILA G. FARMER

HON. WILLIAM B. HOFFMAN