

[Cite as *Elko v. State*, 2009-Ohio-4557.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JEFFREY ELKO

Petitioner-Appellee

-VS-

STATE OF OHIO

Respondent-Appellant

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. Julie A. Edwards, J.

Hon. Patricia A. Delaney, J.

Case No. 2008CA0220

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Case No. 2008CV0304D

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

August 31, 2009

APPEARANCES:

For Petitioner-Appellee

JEFFREY ELKO

I/M A-453425

Mansfield Correctional Institution

P.O. Box 788

Mansfield, OH 44901

For Respondent-Appellant

FRANK ARDIS, JR.

KIRSTEN PSCHOLKA-GARTNER

38 South Park

Mansfield, OH 44902

Farmer P.J.

{¶1} On or about January 16, 2008, appellee, Jeffrey Elko, received a Notice of New Classification and Registration Duties, based on Ohio's Adam Walsh Act. The notice indicated that appellee was being classified as a Tier III sex offender.

{¶2} On February 4, 2008, appellee filed a Petition Challenging Attorney General's New Sex Offender Classification and Constitutionality of Application on him of Am. Sub. S. B. 10 Registration and Residence Restrictions with the Court of Common Pleas of Richland County, Ohio pursuant to R.C. 2950.031(E) and 2950.032(E), challenging both the level of his classification and the application of the Adam Walsh Act. Appellee contested his reclassification under R.C. 2950.01, et seq., as amended by S.B. No. 10, effective date January 1, 2008, a law which was in effect on the date he was reclassified, but was not in effect on the date he committed the sexual offense in question. Appellee challenged the constitutionality of S.B. No. 10 which eliminated the prior sex offender classifications and substituted a three-tier classification system based on the offense committed. Appellee argued R.C. Chapter 2950, as amended by S.B. No. 10, violated the prohibition against ex post facto laws, interfered with his right to contract because it required the state to breach his plea agreement, violated the separation of powers doctrine, constituted a double jeopardy violation, and violated both procedural and substantive due process.

{¶3} By conditional final order filed October 7, 2008, the trial court found S.B. No. 10 was unconstitutional both facially and as applied to appellee because it violated the prohibitions against both retroactive and ex post facto laws. In granting judgment in

appellee's favor, the trial court relied upon its decision in *Sigler v. State*, Richland C.P. No. 07-CV1863.

{¶4} Appellant, the state of Ohio, filed an appeal on November 24, 2008. On January 14, 2009, this court sua sponte stayed all further proceedings in this, as well as numerous other Adam Walsh cases from Richland County, pending our decision in the aforementioned *Sigler* case.

{¶5} On April 27, 2009, this court reversed the trial court's decision in *Sigler*. See, *Sigler v. State*, Richland App. No. 08CA79, 2009-Ohio-2010. By judgment entry filed May 8, 2009, this court sua sponte lifted the stay and assigned this case to the accelerated calendar.

{¶6} This matter is now before this court for consideration. Assignments of error are as follows:

I

{¶7} "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 STATUE 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."

II

{¶8} "WHETHER SENATE BILL 10'S LEGISLATIVE ADJUSTMENT TO THE FREQUENCY AND DURATION OF APPELLE'S (SIC) PRE-EXISTING 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."

III

{¶9} "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."

IV

{¶10} "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."

{¶11} Preliminarily, we note this case comes to us on the accelerated calendar. App.R. 11.1, which governs accelerated calendar cases, provides in pertinent part the following:

{¶12} "(E) Determination and judgment on appeal

{¶13} "The appeal will be determined as provided by App. R. 11.1. It shall be sufficient compliance with App. R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusionary form.

{¶14} "The decision may be by judgment entry in which case it will not be published in any form."

{¶15} One of the important purposes of the accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on the regular calendar where the briefs, facts, and legal issues are more complicated. *Crawford v. Eastland Shopping Mall Assn.* (1983), 11 Ohio App.3d 158.

{¶16} This appeal shall be considered in accordance with the aforementioned rules.

I, II, III

{¶17} In these assignments of error, appellant claims the trial court erred in finding S.B. No. 10 to be unconstitutional on multiple grounds. We agree.

{¶18} This court has examined identical arguments as set forth by appellee and has rejected them. See, *State v. Gooding*, Coshocton App. No. 08CA5, 2008-Ohio-5954; See also, *Sigler v. State*, Richland App. No. 08CA79, 2009-Ohio-2010. Virtually every appellate district in this state has upheld the Adam Walsh Act against the identical challenges raised by appellee herein. See, *State v. Graves*, 179 Ohio App.3d 107, 2008-Ohio-5763; *Holcomb v. State*, 3rd Dist. Nos. 8-08-23, 8-08-25, 8-08-26, 8-08-24, 2009-Ohio-782; *State v. Bodyke*, 6th Dist. Nos. H-07-040, H07-041, H07-042, 2008-Ohio-6387; *State v. Byers*, 7th Dist. No. 07CO39, 2008-Ohio-5051; *State v. Ellis*, 8th Dist. No. 90844, 2008-Ohio-6283; *State v. Honey*, 9th Dist. No. 08CA0018-M, 2008-Ohio-4943; *State v. Christian*, 10th Dist. No. 08AP-170, 2008-Ohio-6304; *State v. Swank*, 11th Dist. No. 2008-L-019, 2008-Ohio-6059; and *State v. Williams*, 12th Dist. No. CA2008-02-029, 2008-Ohio-6195.

{¶19} Upon thorough review of the arguments in this case, we shall follow the law as set forth in our decisions in *Gooding and Sigler*, supra.

{¶20} Assignments of Error I, II, and III are granted.

IV

{¶21} Appellant claims the trial court erred in finding S.B. No. 10 to be unconstitutional on the basis that it violates the right to contract pursuant to Section 28, Article II, of the Ohio Constitution. We agree.

{¶22} This court has examined identical arguments and has accepted them. *Sigler*, at ¶88. Upon thorough review of the arguments herein, we shall follow the law as set forth in our decision in *Sigler*.

{¶23} Assignment of Error IV is granted.

{¶24} The judgment of the Court of Common Pleas of Richland County, Ohio is hereby reversed, and the matter is remanded to said court for further proceedings consistent with this opinion and the law.

By Farmer, P.J.

Edwards, J. and

Delaney, J. concur.

s/ Sheila G. Farmer

s/ Julie A. Edwards

s/ Patricia A. Delaney

JUDGES

SGF/db 0723

JUDGES