

[Cite as *Wilson v. State*, 2010-Ohio-1647.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

LONNIE WILSON

Petitioner-Appellant

-vs-

STATE OF OHIO

Respondent-Appellee

JUDGES:

Hon. Julie A. Edwards, P.J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 2009 CA 00173

OPINION

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Case No. 2008 CV 00328

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

April 12, 2010

APPEARANCES:

For Petitioner-Appellant

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For Respondent-Appellee

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Wise, J.

{¶1} Appellant appeals the decision of the Stark County Court of Common Pleas reclassifying him under the Senate Bill [S.B.] 10 classification and registration “tier” system. The relevant facts leading to this appeal are as follows.

{¶2} In August 2003, appellant pled guilty to sexual battery and failure to comply with the signal or order of a police officer in the Summit County Court of Common Pleas. As a result, appellant was sentenced, respectively, to two years in prison and six months in jail, to be served concurrently. Furthermore, appellant was classified as a sexually-oriented offender under the pre-2008 sexual offender registration system.

{¶3} Appellant thereafter served a period of incarceration and was subsequently judicially released.

{¶4} On or about November 26, 2007, appellant received from the Office of the Attorney General a “Notice of New Classification and Registration Duties,” based on S.B. 10 and the Adam Walsh Act. The notice indicated that he was being reclassified as a Tier III sex offender.

{¶5} On January 16, 2008, appellant filed a “Petition to Contest Reclassification” with the Stark County Court of Common Pleas (hereinafter “trial court”) pursuant to R.C. 2950.031(E) and 2950.032(E).

{¶6} On June 3, 2009, the trial court denied appellant’s petition challenging reclassification.

{¶7} On July 1, 2009, appellant filed a notice of appeal. He herein raises the following five Assignments of Error:

{¶18} “I. APPLICATION OF SENATE BILL 10 VIOLATES APPELLANT’S LEGAL AND CONSTITUTIONAL RIGHTS.

{¶19} “II. SENATE BILL 10 APPLICATION VIOLATES THE EX POST FACTO AND RETROACTIVITY CLAUSES.

{¶10} “III. APPELLANT’S RIGHT TO CONTRACT HAS BEEN VIOLATED AND THE PLEA AGREEMENT DOES NOT ACKNOWLEDGE THAT APPELLANT WAS SUFFEREING (SIC) FROM A SEVERE MENTAL ILLNESS AT THE TIME OF THE OFFENSE.

{¶11} “IV. SENATE BILL 10’S RETROACTIVE APPLICATION VIOLATES THE DOUBLE JEOPARDY CLAUSE AND APPELLANT’S CONSTITUTIONAL RIGHTS.

{¶12} “V. SENATE BILL 10 IS VIOLATIVE OF APPELLANT WILSON’S SUBSTANTIVE DUE PROCESS RIGHTS.”

I., II., IV.

{¶13} In his First, Second, and Fourth Assignments of Error, appellant contends that the trial court’s reclassification under S.B. 10 was unconstitutional on multiple grounds. We disagree.

{¶14} Appellant first argues that the S.B. 10 scheme violates the separation of powers doctrine. In *State ex rel. Bray v. Russell* (2000), 89 Ohio St.3d 132, 729 N.E.2d 359, the Ohio Supreme Court reiterated as follows: “The essential principle underlying the policy of the division of powers of government into three departments is that powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments, and further that none of them ought to possess directly or indirectly an overruling influence over the others.” *Id.* at 134, quoting

State ex rel. Bryant v. Akron Metro. Park Dist. (1929), 120 Ohio St. 464, 473, 166 N.E. 407.

{¶15} Nonetheless, we rejected a “separation of powers” argument similar to that now raised by appellant in *In re A.R.*, Licking App.No. 08-CA-17, 2008-Ohio-6581, ¶ 34.¹ We find no grounds to deviate from this precedent in the present appeal.

{¶16} Appellant next argues that the application of S.B. 10 violates constitutional prohibitions against ex post facto and retroactive laws. However, this Court rejected this argument in *Sigler v. State*, Richland App. No. 08-CA-79, 2009-Ohio-2010, ¶ 47, ¶ 74.²

{¶17} Appellant additionally argues that the application of S.B. 10 violates his constitutional protection from double jeopardy. In *In re A.R.*, supra, although the issue of double jeopardy was not specifically brought up in the assignments of error, we noted that in *State v. Williams* (2000), 88 Ohio St.3d 513, 728 N.E.2d 342, 2000-Ohio-428, the Ohio Supreme Court had determined that the earlier version of Ohio's sex offender statutes did not violate the Double Jeopardy Clause. *A.R.* at ¶ 32. Based on the constitutional analysis set forth in *A.R.*, the application of S.B. 10 in the case sub judice was not punitive and does not implicate the Double Jeopardy Clause. See, also, *Adamson v. State*, Lake App.No. 2008-L-045, 2009-Ohio-6996, ¶ 72 - ¶ 74.

{¶18} Accordingly, appellant's First, Second, and Fourth Assignments of Error are overruled.

¹ The Ohio Supreme Court has accepted *A.R.* for further appeal. See *In re A.R.*, 121 Ohio St.3d 1472, 905 N.E.2d 653, 2009-Ohio-2045.

² The Ohio Supreme Court has also accepted *Sigler* for further appeal. See *Sigler v. State*, 122 Ohio St.3d 1520, 913 N.E.2d 457, 2009-Ohio-4776.

III.

{¶19} In his Third Assignment of Error, appellant argues his reclassification is unconstitutional on the basis that it violates the right to contract pursuant to Article I, Section 10 of the United States Constitution and Article II, Section 28 of the Ohio Constitution. We disagree.

{¶20} In *State v. Winfield*, Richland App. No. 2005-CA-32, 2006-Ohio-721, this Court reviewed the nature of a plea agreement between a defendant and the State. We noted that a plea agreement is generally “contractual in nature and subject to contract-law standards.” *Id.* at ¶ 22, citing *State v. Butts* (1996), 112 Ohio App.3d 683, 686, 679 N.E.2d 1170, and *State v. Namack*, Belmont App. No. 01 BA46, 2002-Ohio-5187, ¶ 25. However, in *Sigler*, *supra*, at ¶ 88, we concluded that Senate Bill 10 does not impair the obligation of contracts.

{¶21} Accordingly, appellant’s Third Assignment of Error is overruled.

V.

{¶22} In his Fifth Assignment of Error, appellant contends S.B. 10 violates his substantive due process rights, specifically as to the statutory lack of a standard of proof beyond a reasonable doubt. We disagree.

{¶23} In support, appellant cites a federal district case from North Carolina, *United States v. Comstock* (E.D.N.C 2007), 507 F.Supp.2d 522. Upon review, we find *Comstock*, which addresses a civil commitment portion of the federal AWA Act, 18 USC 4248, does not lead us to reject clear Ohio precedent concluding that sexual offender classification is civil, not criminal, in nature. See *State v. Cook* (1998), 83 Ohio St.3d

404, 700 N.E.2d 570, 1998-Ohio-291; *State v. Smith* (Nov. 21, 2001), Cuyahoga App. No. 78823.

{¶24} Appellant's claim that his reclassification requires a burden of proof of beyond a reasonable doubt is without merit. Appellant's Fifth Assignment of Error is overruled.

{¶25} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Stark County, Ohio, is affirmed.

By: Wise, J.

Edwards, P. J., and

Farmer, J., concur.

/S/ JOHN W. WISE_____

/S/ JULIE A. EDWARDS_____

/S/ SHEILA G. FARMER_____

JUDGES

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