

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-09-1068

Appellee

Trial Court No. MS08-1461

v.

Frederick Marsh

DECISION AND JUDGMENT

Appellant

Decided: December 18, 2009

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Evy M. Jarrett, Assistant Prosecuting Attorney, for appellee.

Paul A. McCrory, Jr., for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Frederick Marsh, appeals the February 23, 2009 judgment of the Lucas County Court of Common Pleas which denied appellant's petition contesting his reclassification as a Tier III sex offender under R.C. 2950.01, et seq., amended by S.B. 10, also known as the "Adam Walsh Act." For the reasons that follow, we affirm the trial court's judgment.

{¶ 2} A brief synopsis of the relevant facts is as follows. On December 19, 2000, appellant entered an *Alford* plea to one count of attempted rape, in violation of R.C. 2923.02(A) and 2907.02(A)(2). On January 10, 2001, appellant was sentenced to two years of imprisonment and found to be a sexually oriented offender. Pursuant to his sexually oriented offender status, appellant was subject to annual address notification and verification for ten years.

{¶ 3} In early 2008, appellant received a "Notice of Registration Duties of Sexually Oriented Offender Or Child-Victim Offender (SORN)," informing him that he had been adjudicated a Tier III sex offender and that he was subject to community notification for life with a verification required every 90 days.

{¶ 4} On June 5, 2008, appellant petitioned the court for a hearing to contest his reclassification. On February 23, 2009, citing precedent from this court, the trial court denied appellant's petition. This appeal followed.

{¶ 5} Appellant now raises the following three assignments of error for our consideration:

{¶ 6} "I. The trial court erred in failing to hold that appellant's reclassification from sexually oriented offender, as explicitly ordered by a trial court at the time of appellant's sentencing, to Tier III Sex Offender, violated the Separation of Powers Doctrine.

{¶ 7} "II. The trial court erred in failing to hold that appellant's reclassification from sexually oriented offender to Tier III Sex Offender violates the Prohibition on Ex Post Facto Laws in Article I, Section 10 of the United States Constitution.

{¶ 8} "III. The trial court erred in failing to hold that appellant's reclassification from sexually oriented offender to Tier III Sex Offender violates the Prohibition on Retroactive Laws in Article II, Section 28 of the Ohio Constitution."

{¶ 9} Appellant's three assignments of error raise issues regarding the constitutionality of the application of S.B. 10's three-tier classification of sexual offenders to offenses occurring prior to its July 1, 2007 effective date. Specifically, appellant contends that his reclassification as a Tier III sex offender violates the separation of powers doctrine and the prohibition against ex post facto or retroactive laws.

{¶ 10} Addressing the assignments of error collectively, we find that the issues raised on appeal have been previously considered and rejected by this court. See *Montgomery v. Leffler*, 6th Dist. No. H-08-011, 2008-Ohio-6397; *State v. Bodyke*, 6th Dist. Nos. H-07-040, H-07-041, H-07-042, 2008-Ohio-6387; and *State v. Moody*, 6th Dist. Nos. L-08-1108, L-08-1109, 2009-Ohio-47. Based on the foregoing, we find that appellant's three assignments of error are not well-taken.

{¶ 11} On consideration whereof, we find that appellant was not prejudiced or prevented from having a fair proceeding and the judgment of the Lucas County Court of

Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
