

[Cite as *State v. Caskey*, 2010-Ohio-6039.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 09AP-766
v.	:	(C.P.C. No. 08CR-08-6170)
	:	
Zachary T. Caskey,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on December 9, 2010

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*Ron O'Brien*, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

*Yeura R. Venters*, Public Defender, and *Paul Skendelas*, for appellant.

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ON REMAND from the Supreme Court of Ohio.

FRENCH, J.

{¶1} Defendant-appellant, Zachary T. Caskey ("appellant"), appeals his Tier II sex offender classification from the Franklin County Court of Common Pleas. For the following reasons, we reverse that judgment and remand the matter to the trial court.

{¶2} After appellant pleaded guilty to one count of unlawful sexual conduct with a minor, he raised constitutional challenges against the application of S.B. 10, the sex offender classification law implemented in response to the federal Adam Walsh Act. The trial court declined to entertain these challenges, however, concluding that S.B. 10 removes "from the trial court the ability to make any determination with respect to the application of that law." (Tr. 112.) Consequently, the court classified appellant a Tier II sex offender pursuant to S.B. 10.

{¶3} Appellant appealed in *State v. Caskey*, 10th Dist. No. 09AP-766, 2010-Ohio-629 ("*Caskey I*"). He claimed that the trial court erred by concluding that it lacked authority to consider his constitutional challenges. *Id.* at ¶3-4. This court dismissed appellant's appeal, however. *Id.* at ¶4. We relied on *State v. Conkel*, 10th Dist. No. 08AP-845, 2009-Ohio-2852, ¶8, and *State v. Christian*, 10th Dist. No. 08AP-170, 2008-Ohio-6304, ¶7-10, which held that a defendant lacks standing to challenge on direct appeal a sex offender classification made under S.B. 10. *Caskey I* at ¶4. We explained that there is no final order to appeal from because the sex offender classification arises by operation of law and not through judicial determination. *Id.*

{¶4} The Supreme Court of Ohio reversed our judgment, pursuant to *State v. Clayborn*, 125 Ohio St.3d 450, 2010-Ohio-2123. See *State v. Caskey*, 126 Ohio St.3d 109, 2010-Ohio-3232 ("*Caskey II*"). In *Clayborn*, the court indicated that constitutional challenges to S.B. 10 were cognizable on direct appeal even though sex offender classifications under that law occur through no judicial determination. *Id.* at ¶12-15.

{¶5} We now revisit appellant's appeal, on remand, where he has raised the following assignment of error:

The trial court erred in finding that it lacked jurisdiction to address a constitutional challenge to sex offender registration obligations and residential restrictions at the sentencing hearing on a charge of unlawful sexual conduct with a minor.

{¶6} We hold that the trial court erred by refusing to consider appellant's constitutional challenges to S.B. 10 because that decision was rooted in reasoning from this court that *Clayborn* rejected. Thus, we sustain appellant's single assignment of error, reverse the judgment of the Franklin County Court of Common Pleas, and remand this matter to that court for further proceedings consistent with this decision.

*Judgment reversed and cause remanded.*

KLATT and CONNOR, JJ., concur.

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