

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ATHENS COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No: 09CA18
	:	
v.	:	
	:	
LAWRENCE ANDERSON,	:	<u>MEMORANDUM DECISION</u>
	:	<u>AND JUDGMENT ENTRY</u>
	:	
Defendant-Appellant.	:	File-stamped date: 12-21-09

APPEARANCES:

L. Jackson Henniger, Logan, Ohio, for Appellant.

C. David Warren, Athens County Prosecutor, and George Reitmeier, Athens County Assistant Prosecutor, Athens, Ohio, for Appellee.

Kline, P.J.:

{¶1} Lawrence R. Anderson appeals the trial court’s denial of his constitutional challenges to Ohio’s Adam Walsh Act. However, we have previously rejected all of Anderson’s arguments. We see no reason to reconsider our prior rulings, and we therefore affirm the judgment of the trial court.

I.

{¶2} Anderson was convicted of Unlawful Sexual Conduct with a Minor in 1991 in Idaho. The State initially classified Anderson as a sexually oriented offender under Ohio’s previous scheme for the classification of sexual offenders. The Ohio General Assembly then enacted Ohio’s Adam Walsh Act (“S.B. 10”). Pursuant to this act, the

Attorney General of Ohio notified Anderson that under S.B. 10 he was being reclassified as a tier III sex offender.

{¶3} Anderson filed a petition to contest the Ohio Attorney General's determination of Anderson's status under S.B. 10. After a hearing, the trial court denied Anderson's constitutional challenges. Anderson appeals, and he now raises the following assignments of error for our review: I. "THE RETROACTIVE APPLICATION OF SENATE BILL 10 VIOLATES THE EX POST FACTO CLAUSE OF THE UNITED STATES CONSTITUTION AND THE RETROACTIVITY CLAUSE OF SECTION 28, ARTICLE II OF THE OHIO CONSTITUTION." II. "THE RETROACTIVE APPLICATION OF SENATE BILL 10 VIOLATES THE SEPARATION OF POWERS DOCTRINE THAT IS INHERENT IN OHIO'S CONSTITUTION." III. "THE RETROACTIVE APPLICATION OF SENATE BILL 10 VIOLATES THE DOUBLE JEOPARDY CLAUSES OF THE UNITED STATES CONSTITUTION AND THE OHIO CONSTITUTION." IV. "THE APPLICATION OF SENATE BILL 10 VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION AS IT APPLIES TO THE STATES THROUGH SECTION 5 OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION." And, V. "THE RETROACTIVE APPLICATION OF SENATE BILL 10 VIOLATES THE RIGHT TO CONTRACT UNDER THE UNITED STATES CONSTITUTION AND THE OHIO CONSTITUTION."

II.

{¶4} Each of Anderson's five assignments of error consists of a constitutional challenge to S.B. 10. Anderson's arguments about the constitutionality of S.B. 10 are

legal questions that we review de novo. See *State v. Day*, Adams App. Nos. 08CA865 & 08CA866, 2009-Ohio-3755, at ¶26.

{¶5} Statutes enacted in Ohio, including S.B. 10, are “presumed to be constitutional.” *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, at ¶12, citing *State ex rel. Jackman v. Cuyahoga Cty. Court of Common Pleas* (1967), 9 Ohio St.2d 159, 161. This presumption remains unless Anderson can establish, “beyond reasonable doubt, that the statute is unconstitutional.” *Ferguson* at ¶12, citing *Roosevelt Properties Co. v. Kinney* (1984), 12 Ohio St.3d 7, 13.

{¶6} Anderson raises his arguments in five separate assignments of error. Nonetheless, we address all of his assignments of error in this section because every assignment of error raises a constitutional challenge to S.B. 10 that we have previously rejected.

{¶7} In his first assignment of error, Anderson contends the retroactive application of S.B. 10 violates the Ex Post Facto Clause of the United States Constitution and the Retroactivity Clause of the Ohio Constitution. We have previously rejected this argument. See, e.g., *State v. Coburn*, Ross App. No. 08CA3062, 2009-Ohio-632, at ¶8-13; *State v. Randlett*, Ross App. No. 08CA3046, 2009-Ohio-112, at ¶8-15; *State v. Linville*, Ross App. No. 08CA3051, 2009-Ohio-313, at ¶7-12; *State v. Messer*, Ross App. No. 08CA3050, 2009-Ohio-312, at ¶7-13.

{¶8} In his second assignment of error, Anderson contends that retroactive application of S.B. 10 violates the separation of powers doctrine that is inherent in Ohio’s Constitution. Again, we have previously rejected this argument. See, e.g., *Coburn* at ¶14-20; *Randlett* at ¶16-23; *Linville* at ¶19-27; *Messer* at ¶20-28.

{¶9} In his third assignment of error, Anderson contends that retroactive application of S.B. 10 violates the Double Jeopardy Clauses of the United States Constitution and the Ohio Constitution. We have also previously rejected this argument. See, e.g., *State v. Pletcher*, Ross App. No. 08CA3044, 2009-Ohio-1819, at ¶14-16; *Messer* at ¶29-31; *Randlett* at ¶24-27.

{¶10} In his fourth assignment of error, Anderson contends that application of S.B. 10 violates the Due Process Clause of the United States Constitution. We have previously rejected this argument as well. See, e.g., *State v. Mollohan*, Washington App. No. 09CA3, 2009-Ohio-5133, at ¶8; *State v. Irvin*, Ross App. No. 08CA3057, 2009-Ohio-3128, at ¶23-26; *State v. Sewell*, Ross App. No. 08CA3042, 2009-Ohio-594, at ¶15-18; *State v. Netherland*, Ross App. No. 08CA3043, 2008-Ohio-7007, at ¶16-22.

{¶11} Finally, in his fifth assignment of error, Anderson contends that S.B. 10 violates his right to contract under the United States Constitution and the Ohio Constitution, but we have previously rejected this argument. *Randlett* at ¶35-38. In addition, the *Randlett* opinion cited precedent from other Ohio District Courts of Appeals, and we find those cases persuasive. See *State v. Desbiens*, Montgomery App. No. 22489, 2008-Ohio-3375, at ¶31-33; *In re Gant*, Allen App. No. 1-08-11, 2008-Ohio-5198, at ¶22-24.

{¶12} We see no reason to revisit our decisions under these constitutional provisions. Therefore, we overrule Anderson's assignments of error and affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and Appellant pay the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Athens County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Harsha, J. and McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Roger L. Kline, Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.