

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JEFFREY MACK	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Petitioner-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 08-CA-327
STATE OF OHIO	:	
	:	
	:	
Respondent-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Richland County Court of
Common Pleas Case No. 2008-CV-712D

JUDGMENT: REVERSED AND REMANDED

DATE OF JUDGMENT ENTRY: July 8, 2009

APPEARANCES:

For Petitioner-Appellee:

JEFFREY MACK #A493807
P.O. Box 788
Mansfield, OH 44901

For Respondent-Appellant:

FRANK ARDIS, JR.
KIRSTEN PSCHOLKA-GARTNER
38 S. Park
Mansfield, OH 44902

Delaney, J.

{¶1} Respondent-Appellant, the State of Ohio, through the Richland County Prosecutor's Office, appeals the Richland County of Court of Common Pleas ruling finding Senate Bill 10 ("S.B. 10"), Ohio's sexual offender classification and registration scheme, to be unconstitutional in its entirety. For the reasons that follow, we reverse and remand the decision of the trial court.

STATEMENT OF THE FACTS AND THE CASE

{¶2} Petitioner-Appellee, Jeffrey Mack, was convicted in the Cuyahoga County Court of Common Pleas for a certain felony sex offense. As a result, Appellee was classified as a sex offender and ordered to adhere to the reporting requirements set forth for that classification.

{¶3} On or about January 31, 2008, Appellee received notification from the Ohio Attorney General that his current classification would change as of January 1, 2008, to conform with the enactment of S.B. 10, also known as the "Adam Walsh Act." Appellee was reclassified as a Tier III Offender.

{¶4} Appellee contested his reclassification as a Tier III sex offender under R.C. 2950.01, et. seq. as amended by S.B. 10. The Adam Walsh Act was in effect on the date the trial court re-classified Appellee, but was not in effect on the date Appellee committed the sexual offense in question.

{¶5} Appellee challenged the constitutionality of Ohio's S.B. 10, effective January 1, 2008. S.B. 10 eliminated prior sex offender classifications and substituted a three-tier classification system based on the offense committed. Appellee argued that R.C. Chapter 2950, as amended by S.B. 10, violated the prohibition against ex post

facto laws, that it interfered with his right to contract because it required the state to breach his plea agreement, that it violated the separation of powers doctrine and constituted a double jeopardy violation, and that it violated both procedural and substantive due process.

{¶6} The trial court found that S.B. 10 was unconstitutional both facially and as applied to Appellee because it violated prohibitions against both retroactive and ex post facto laws. The trial court relied upon its decision in *William Sigler v. State of Ohio*, Richland Court of Common Pleas, Case No. 07-CV-1863D, in granting judgment in favor of Appellee.

{¶7} The State filed a notice of appeal, raising four Assignments of Error.

{¶8} On January 14, 2009, this Court *sua sponte* stayed all further proceedings in this, as well as numerous other Richland County cases involving the Adam Walsh Act, pending our decision in *Sigler v. State*, Richland App. No. 08-CA-79.

{¶9} On April, 27, 2009, this Court reversed the judgment of the trial court in *v. State*, Richland App. No. 08-CA-79, 2009-Ohio-2010. On May 20, 2009, this court *sua sponte* assigned this case to the accelerated calendar.

{¶10} Petitioner-Appellee did not file a brief in response.

{¶11} The State raises four Assignments of Error:

{¶12} "1. 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 STATUTE 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.

{¶13} "II. WHETHER SENATE BILL 10'S LEGISLATIVE ADJUSTMENT TO THE FREQUENCY AND DURATION OF APPELLEE'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.

{¶14} "III. 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 [SIC] FOR THE CRIMES THEY COMMITTED.

{¶15} “IV. 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.”

STANDARD OF REVIEW

{¶16} This case comes to us on the accelerated calendar. App. R. 11.1, which governs accelerated calendar cases, provides, in pertinent part:

{¶17} "(E) Determination and judgment on appeal. 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 conclusory form. The decision may be by judgment entry in which case it will not be published in any form."

{¶18} One of the important purposes of 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.

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

I, II & III

{¶20} In the first, second, and third Assignments of Error, the State contends the trial court erred in finding S.B. 10 unconstitutional on multiple grounds. We agree.

{¶21} This Court has examined and ruled upon identical arguments the trial court accepted in finding S.B. 10 unconstitutional; we have rejected those arguments. Upon the authority of *State v. Gooding*, Coshocton App. No. 08 CA 5, 2008-Ohio-5954 and *Sigler v. State*, Richland App. No. 08-CA-79, 2009-Ohio-2010, we sustain the first, second and third Assignments of Error.

IV

{¶22} In its fourth Assignment of Error, the State argues that the trial court erred by finding S.B. 10 to be unconstitutional on the basis that it violates the right to contract pursuant to Article II, Section 28 of the Ohio Constitution. We find the State's argument to be well taken based upon our decision in *Sigler v. State*, Richland App. No. 08-CA-79, 2009-Ohio-2010, and we therefore sustain the fourth Assignment of Error.

{¶23} For the foregoing reasons, we find the State's arguments to be meritorious and sustain all four Assignments of Error. Senate Bill 10 is constitutional and, as courts across the Ohio have repeatedly held, does not violate prohibitions against retroactive or ex post facto laws. See also, *State v. Graves*, 179 Ohio App.3d 107, 2008-Ohio-5763; *Holcomb v. State*, 3rd Dist. No. 8-08-23, 2009-Ohio-782; *State v. Bodyke*, 6th Dist. No. H-07-040, 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; *State v. Williams*, 12th Dist. No. CA2008-02-029, 2008-Ohio-6195.

{¶24} The decision of the Richland County Court of Common Pleas is therefore reversed and this case is remanded for proceedings in accordance with our opinion and the law.

By: Delaney, J.

Gwin, P.J. and

Hoffman, J. concur.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

PAD:kgb

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JEFFREY MACK	:	
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Petitioner-Appellee	:	
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-vs-	:	JUDGMENT ENTRY
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STATE OF OHIO	:	
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	:	
	:	Case No. 08-CA-327
Respondent-Appellant	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Richland County Court of Common Pleas is reversed and this case is remanded for proceedings in accordance with our opinion and the law. Costs assessed to Appellee.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN