

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

TYRONE GOLPHIN	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
	:	Hon. William B. Hoffman, J.
Petitioner-Appellee	:	Hon. John W. Wise, J.
	:	
-vs-	:	
	:	Case No. 2008-CA-0240
STATE OF OHIO	:	
	:	
Respondent-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil appeal from the Richland County Court of Common Pleas, Case No. 08-CV-314D

JUDGMENT: Vacated and Remanded

DATE OF JUDGMENT ENTRY: July 24, 2009

APPEARANCES:

For Petitioner-Appellee

For Respondent-Appellant

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FRANK ARDIS, JR
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Gwin, P.J.

{¶1} Respondent-appellant, the State of Ohio, through the Richland County Prosecuting Attorney's Office, appeals the Richland County trial court's ruling finding Senate Bill ["S.B."] 10, Ohio's sexual offender classification and registration scheme, to be unconstitutional in its entirety.

{¶2} Petitioner-appellee Tyrone Golphin, contested his reclassification as a sex offender under R.C. 2950.01, et seq., as amended by S.B.10, also known as the "Adam Walsh Act" ["AWA"] a law which was in effect on the date the trial court re-classified appellee, but which was not in effect on the date he committed the sexual offense in question. Appellee contended that he "has never been convict [sic.] of any Sex offense that would require him to register... [and] on July 11, 2002 the State filed a Notice of House Bill 180 Inapplicability..." (Petition to Contest Reclassification, filed February 5, 2008).

{¶3} Appellee was convicted in the Cuyahoga County Court of Common Pleas of Attempted Murder with a firearm specification, kidnapping with a firearm specification, and aggravated robbery with a firearm specification. Appellee was further convicted of prior felony specifications pertaining to counts one and two. Appellee was not classified as a sexual offender and was not ordered to adhere to any reporting requirements.

{¶4} On or about November 30, 2007, appellee received a Notice of New Classification and Registration Duties, based on Ohio's Adam Walsh Act, from the Office of the Attorney General. The Notice indicated that he was being reclassified as a Tier II Sex Offender. The Notice did not contain any identifying information such as a

case caption, case number or other indication as to what county court or charge the notice pertained.

{¶15} On February 5, 2008, appellee, pro se, timely filed a Petition to Contest Application of the Adam Walsh Act with the Court of Common Pleas pursuant to Ohio Rev. Code 2950.031(E) and 2950.032(E). Appellee contended that he “has never been convict [sic.] of any Sex offense that would require him to register... [and] on July 11, 2002 the State filed a Notice of House Bill 180 Inapplicability...” (Petition to Contest Reclassification, filed February 5, 2008).

{¶16} On February 14, 2008, the State filed a Memorandum in Opposition and Motion to Dismiss contending that the AWA was constitutional in its entirety. The State did not address appellee’s claim that the AWA did not apply to him because he “has never been convict [sic.] of any Sex offense that would require him to register... [and] on July 11, 2002 the State filed a Notice of House Bill 180 Inapplicability...”

{¶17} The trial court found that Senate Bill 10 was unconstitutional both facially and as applied to appellee because it violated the prohibitions against both retroactive and ex post facto laws. The trial court relying upon its decision in *Sigler v. State*, Richland County Court of Common Pleas, Case No. 07 CV 1863 granted judgment in favor of appellee on October 8, 2008. However, the trial court did not address appellee’s contention that he has “never been convict [sic.] of any Sex offense that would require him to register... [and] on July 11, 2002 the State filed a Notice of House Bill 180 Inapplicability...”

{¶18} Appellant, State of Ohio, through the Richland County Prosecuting Attorney’s Office, filed a notice of appeal, raising four assignments of error.

{¶19} On January 14, 2009, this Court *sua sponte* stayed all further proceedings in this, as well as numerous other, Richland County Adam Walsh cases pending our decision in *Sigler v. State*, Richland App. No. 08-CA-79, 2009-Ohio-210.

{¶10} On April 27, 2009, this Court reversed the trial court's decision in *Sigler*.

{¶11} On May 8, 2009, this Court *sua sponte* assigned this case to the accelerated calendar.

{¶12} Appellee has not filed a brief in this case.

{¶13} Appellant's four Assignments of Error are as follows:

{¶14} "I. 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 STATUE [sic.] 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.

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

{¶16} “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.

{¶17} “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

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

{¶19} "(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."

{¶20} 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.

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

I, II, III & IV

{¶22} In appellant's first, second, third and fourth assignments of error, appellant contends that the trial court erred in finding Senate Bill 10 to be unconstitutional on multiple grounds.

{¶23} We find that these issues were never raised by appellee in the trial court. Rather appellee contested the application of the AWA to him because he has "never been convict [sic.] of any Sex offense that would require him to register... [and] on July 11, 2002 the State filed a Notice of House Bill 180 Inapplicability..."(Petition to Contest Reclassification, filed February 5, 2008).

{¶24} Accordingly, the trial court was premature in declaring S.B. 10 unconstitutional.

{¶25} The decision of the Richland County Court of Common Pleas is therefore vacated and we remand this matter with instruction that the trial court conduct an evidentiary hearing to determine whether S.B. 10 applies in appellee's case.

By Gwin, P.J.,

Hoffman, J., and

Wise, J., concur

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

HON. JOHN W. WISE

WSG:clw 0717

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

TYRONE GOLPHIN	:	
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Petitioner-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
STATE OF OHIO	:	
	:	
Respondent-Appellant	:	CASE NO. 2008-CA-0240

For the reasons stated in our accompanying Memorandum-Opinion, The decision of the Richland County Court of Common Pleas is therefore vacated and we remand this matter with instruction that the trial court conduct an evidentiary hearing to determine whether S.B. 10 applies in appellee’s case. Costs to appellee.

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

HON. JOHN W. WISE