

[Cite as *State v. Taylor*, 2010-Ohio-141.]

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

STATE OF OHIO,

Plaintiff-Appellee,

vs.

MICHAEL TAYLOR,

Defendant-Appellant.

:

Case No. 09CA22

:

: DECISION AND JUDGMENT ENTRY

:

APPEARANCES:

COUNSEL FOR APPELLANT: Thomas M. Tyack, Tyack, Blackmore & Liston Co.,
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COUNSEL FOR APPELLEE: C. David Warren, Athens County Prosecuting
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CIVIL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 1-7-10

ABELE, J.

{¶ 1} This is an appeal from an Athens County Common Pleas Court judgment that affirmed the re-classification of Michael Taylor, defendant below and appellant herein, as a Tier III sex offender. Appellant assigns the following error for review:

“THE TRIAL COURT ERRED AND VIOLATED
DEFENDANT-APPELLANT’S CONSTITUTIONAL RIGHTS
BY FINDING THAT THE ADAM WALSH STATUTE WAS

CONSTITUTIONAL[.]”¹

{¶ 2} On November 5, 2004, appellant pled guilty to three amended counts of sexual battery. The trial court accepted his pleas and, on December 16, 2004, sentenced him to serve consecutive three year terms of imprisonment on each count.

{¶ 3} On November 30, 2007, the Ohio Attorney General sent notice to appellant that he was reclassified as a Tier III sex offender under the provisions enacted as part of Ohio's “Adam Walsh Child Protection and Safety Act” (AWA), Am.Sub.S.B. 10, 2007 Ohio Laws, File No. 10. Appellant contested his reclassification. Subsequently, the court affirmed the classification. This appeal followed.

{¶ 4} Appellant asserts in his assignment of error that the retroactive application of the AWA is unconstitutional for several reasons. First, he asserts that the AWA violates the United States Constitution prohibitions against ex post facto laws and the Ohio Constitution ban on retroactive laws. We disagree. This Court has considered and rejected these two issues on a number of occasions. See State v. Mollohan, Washington App. No. 09CA3, 2009-Ohio-5133, at ¶8; State v. Musser, Ross App. No. 08CA3077, 2009-Ohio-4979, at ¶4. We find nothing in appellant’s brief to prompt us to reconsider our position. Thus, we adhere to our previous rulings.

{¶ 5} Appellant also asserts that the AWA violates the separation of powers doctrine. We have previously rejected that argument as well. See State v. Howard,

¹ The assignment of error includes five subparts that set forth particular reasons why the law is unconstitutional. We treat those subparts as issues within the assignment of error.

Ross App. No. 08CA3086, 2009-Ohio-4496, at ¶6; State v. Linville, Ross App. No. 08CA3051, 2009-Ohio-313, at ¶¶24-25. Once again, we find nothing in appellant's brief to prompt us to reconsider those rulings.

{¶ 6} Appellant posits that the retroactive application of the AWA constitutes "multiple punishments" for his offenses in violation of both the federal and state constitutional safeguards against "Double Jeopardy." The AWA is not punitive, however. Thus there can be no violation of double jeopardy protections under either constitution. See State v. Trent, Ross App. No. 08CA3079, 2009-Ohio-3923 at ¶7; State v. Pletcher, Ross App. No. 08CA3044, 2009-Ohio-1819, at ¶16.

{¶ 7} Finally, appellant, who is currently incarcerated, contends that the AWA residency restrictions violate his Due Process rights. This Court has previously ruled that any such challenge to the AWA residency restriction is not "ripe" for adjudication. Thus, as long as appellant remains incarcerated, he lacks standing to bring that challenge. Musser, supra at ¶7; State v. Coburn, Ross App. No. 08CA3062, 2009-Ohio-632, at ¶¶24-25. Therefore, the constitutionality of the AWA's residency requirement is not properly before us at this time.

{¶ 8} Accordingly, for all these reasons we find no merit in appellant's assignment of error and it hereby overruled and the judgment of the trial court is hereby affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant 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 Common Pleas Court to carry this judgment into execution.

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

McFarland, P.J. & Kline, J.: Concur in Judgment & Opinion
For the Court

BY: _____
Peter B. Abele, 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.