

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

State of Ohio

Court of Appeals No. H-08-009

Appellee

Trial Court No. CRI-2000-0201

v.

Charles K. Case

DECISION AND JUDGMENT

Appellant

Decided: June 19, 2009

* * * * *

Russell V. Leffler, Huron County Prosecuting Attorney, for appellee.

Timothy Young, Ohio Public Defender, and Melissa M. Prendergast, Assistant State Public Defender, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Huron County Court of Common Pleas that found appellant guilty of one count of attempted sexual battery in violation of R.C. 2903.02(A) and 2907.03(A)(3), imposed a twelve-month prison sentence, and designated him a sexually oriented offender.

{¶ 2} The relevant facts of this case are as follows. Appellant served his sentence and, in 2007, he received notification from the Ohio Attorney General that he was subject to new sexual offender classification and registration duties under R.C. 2950.01, et seq., as amended by S.B. 10. Appellant filed a pro se petition to contest his new classification and notification duties and the matter was set for oral hearing. Appellant appeared for the hearing unrepresented by counsel. The trial court found that appellant had been appropriately reclassified as a Tier III offender under S.B. 10 and informed him that he would be required to register his address every 90 days for the rest of his life. The court further ordered that appellant would not be subject to the community notification requirements normally imposed for a Tier III offender. This timely appeal follows.

{¶ 3} Appellant sets forth the following assignments of error:

{¶ 4} "Assignment of Error I

{¶ 5} "The trial court violated Mr. Case's constitutional rights by denying his motion for appointment of counsel. Fifth, Sixth and Fourteenth Amendments to the United States Constitution; Sections 10 and 16, Article 1 of the Ohio Constitution. 6/5/08 Decision and Judgment Entry, Huron County Court of Common Pleas Case No. CRI-2000-0201.

{¶ 6} "Assignment of Error II

{¶ 7} "The reclassification of Mr. Case constitutes a violation of the Separation of Powers Doctrine. Fifth, Sixth and Fourteenth Amendments to the United States Constitution; Sections 10 and 16, Article I of the Ohio Constitution. June 5, 2008

Decision and Judgment Entry, Huron County Court of Common Pleas Case No. CRI-2000-0201.

{¶ 8} "Assignment of Error III

{¶ 9} "The retroactive application of SB 10 violates the prohibition on ex post facto laws. Article I, Section 10 of the United States Constitution. June 5, 2008 Decision and Judgment Entry, Huron County Court of Common Pleas Case No. CRI-2000-0201.

{¶ 10} "Assignment of Error IV

{¶ 11} "The application of SB 10 to Mr. Case violates the prohibition on retroactive laws. Article II, Section 28 of the Ohio Constitution. June 5, 2008 Decision and Judgment Entry, Huron County Court of Common Pleas Case No. CRI-2000-0201.

{¶ 12} "Assignment of Error V

{¶ 13} "The reclassification of Mr. Case violates the proscription against multiple punishments under the Double Jeopardy Clause of the United States Constitution. Fifth Amendment to the United States Constitution; Article I, Section 10 of the Ohio Constitution. June 5, 2008 Decision and Judgment Entry, Huron County Court of Common Pleas Case No. CRI-2000-0201.

{¶ 14} "Assignment of Error VI

{¶ 15} "The residency restrictions of SB 10 violate Due Process. Fifth and Fourteenth Amendments to the United States Constitution; Sections 10 and 16 of the Ohio Constitution. June 5, 2008 Decision and Judgment Entry, Huron County Court of Common Pleas Case No. CRI-2000-0201.

{¶ 16} "Assignment of Error VII

{¶ 17} "The reclassification of Mr. Case constitutes a breach of contract and a violation of the right to contract under the Ohio and United States Constitutions. June 5, 2008 Decision and Judgment Entry, Huron County Court of Common Pleas Case No. CRI-2000-0201. Reclass. Tr. 7-8."

{¶ 18} In support of his first assignment of error, appellant asserts that his constitutional rights were violated when he was denied appointed counsel for his reclassification hearing.

{¶ 19} R.C. 2950.031(E) gives appellant the right to a hearing to contest the application of S.B. 10 to his case. However, "the legislation does not authorize the appointment of counsel." *State v. Messer*, 4th Dist. No. 08CA3050, 2009-Ohio-312, ¶ 15, citing *State v. King*, 2d Dist. No. 08-CA02, 2008-Ohio-2594, ¶ 4, fn. 1. Appellant asserts that he has a right to appointed counsel because S.B. 10 imposes a criminal punishment, as opposed to a mere civil regulatory scheme. The Ohio Supreme Court has continued to find, however, that "R.C. Chapter 2950 is a remedial statute," not a punitive one. *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, ¶ 29-30. Further, litigants have no right to appointed counsel in civil actions. *Messer*, supra, at ¶ 15 (citations omitted). Therefore, appellant has no right to appointed counsel in this matter.

{¶ 20} Accordingly, appellant's first assignment of error is not well-taken.

{¶ 21} Appellant's second, third, fourth, fifth, sixth and seventh assignments of error all raise issues this court has already decided.

{¶ 22} As his second assignment of error, appellant argues that his reclassification pursuant to S.B. 10 violates the separation of powers doctrine by divesting the judiciary of its power to sentence a defendant. This court has already decided that this argument is without merit. See *State v. Bodyke*, 6th Dist. No. H-07-040, 2008-Ohio-6387, ¶ 21-22.

{¶ 23} As his third assignment of error, appellant argues that the retroactive application of S.B. 10 violates the prohibition against ex post facto laws set forth in the United States Constitution. This court has decided that this argument is without merit. See *Bodyke*, supra, ¶ 12-14.

{¶ 24} As his fourth assignment of error, appellant asserts that the application of S.B. 10 to his case violates the prohibition against retroactive laws set forth in the Ohio Constitution. This court has decided that this argument is without merit. See *Bodyke*, supra, ¶ 19.

{¶ 25} As his fifth assignment of error, appellant asserts that his reclassification violates the proscription against multiple punishments under the Double Jeopardy Clause in the United States Constitution and the Ohio Constitution. This court has decided that this argument is without merit. See *Bodyke*, supra, ¶ 20.

{¶ 26} As his sixth assignment of error, appellant asserts that the residency restrictions of S.B. 10 violate his due process rights as set forth in the United States Constitution and the Ohio Constitution. Because there is no evidence in the record that appellant had purchased a home located in a restricted area prior to the effective date of S.B. 10, this argument is without merit. See *Bodyke*, supra, ¶ 15.

{¶ 27} As his seventh assignment of error, appellant asserts that his reclassification constitutes a breach of contract and a violation of the right to contract under the Ohio and United States Constitutions. This court has already decided that this argument is without merit. See *Bodyke*, supra, ¶ 24.

{¶ 28} Accordingly, appellant's second, third, fourth, fifth, sixth and seventh assignments of error are not well-taken.

{¶ 29} On consideration whereof, the judgment of the Huron County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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