

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 09AP-881
	:	(C.P.C. No. 91CR-10-6029)
James A. Slade,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on November 22, 2011

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

Yeura R. Venters, Public Defender, and *David L. Strait*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Defendant-appellant, James A. Slade, appeals from a judgment of the Franklin County Court of Common Pleas denying his petition to contest his reclassification as a Tier III sex offender. For the following reasons, we reverse that judgment and remand the matter with instructions.

{¶2} In 1992, appellant entered a guilty plea and was found guilty of one count of felonious assault. The trial court sentenced him accordingly. In 1998, the trial court

classified appellant as a sexual predator under Ohio's then-existing sexual offender scheme set forth in R.C. Chapter 2950. We affirmed that classification. *State v. Slade* (Dec. 28, 1999), 10th Dist. No. 98AP-1618.

{¶3} In 2007, Ohio's General Assembly enacted 2007 Am.Sub.S.B. No. 10 ("S.B. 10"), which made significant changes to R.C. Chapter 2950. As a result, appellant was reclassified under that law as a Tier III sex offender and subjected to the law's registration, reporting, and community notification requirements. Appellant subsequently filed a petition to contest his reclassification, asserting a variety of constitutional challenges to S.B. 10. The trial court denied appellant's petition.

{¶4} Appellant appeals and assigns the following errors:

[I.] The trial court erred in failing to find that S.B. 10 violates the separation of powers doctrine of the Ohio Constitution.

[II.] The trial court erred in failing to find that retroactive application of all provisions of S.B. 10 violates the Retroactivity Clause contained in Section 28, Article II, of the Ohio Constitution.

[III.] The trial court erred in failing to find that retroactive application of all provisions of S.B. 10 violates the Ex Post Facto Clause of Section 10, Article I of the United States Constitution.

[IV.] The trial court erred in failing to find that retroactive application of S.B. 10 violates the Double Jeopardy Clauses of the Fifth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution.

[V.] The trial court erred in failing to find that the reporting and registration requirements imposed upon the Petitioner under S.B. 10 violate procedural due process rights under the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution.

{¶5} Because it is dispositive, we need only address appellant's second assignment of error. In it, appellant contends that the application of S.B. 10 to defendants whose offenses were committed before the enactment of the law violates the ban on retroactive laws set forth in the Ohio Constitution. In *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, syllabus, the Supreme Court of Ohio agreed:

2007 Am.Sub.S.B. No. 10, as applied to defendants who committed sex offenses prior to its enactment, violates Section 28, Article II of the Ohio Constitution, which prohibits the General Assembly from passing retroactive laws.

{¶6} Appellant committed these offenses before the enactment of S.B. 10. Therefore, in light of *Williams*, appellant's reclassification under that law as a Tier III sexual offender was unconstitutional. *State v. Stapleton*, 10th Dist. No. 09AP-570, 2011-Ohio-3785, ¶15; *State v. McColgan*, 10th Dist. No. 09AP-616, 2011-Ohio-4103, ¶13. Accordingly, the trial court erred in denying appellant's petition, and we sustain appellant's second assignment of error.¹ This ruling renders appellant's remaining assignments of error moot.

{¶7} Having sustained appellant's second assignment of error, we reverse the judgment of the Franklin County Court of Common Pleas. We remand this matter to that court with instructions to: (1) vacate appellant's Tier III sexual offender classification and (2) reinstate his prior classification as a sexual predator, as well as any requirements resulting from that classification.

*Judgment reversed
and remanded with instructions.*

BRYANT, P.J., and TYACK, J., concur.

¹ We note here, contrary to the state's argument, that we have consistently rejected the argument that the petition procedure utilized by appellant in this case has been severed. See *Stapleton* at ¶11.