

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

JEFFREY SOUTHERLAND,	:	
Plaintiff-Appellant,	:	CASE NO. CA2009-02-040
- vs -	:	<u>OPINION</u>
	:	9/28/2009
STATE OF OHIO,	:	
Defendant-Appellee.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV2008-01-0516

Timothy R. Evans, 29 North "D" Street, P.O. Box 687, Hamilton, Ohio 45013, for plaintiff-appellant, Jeffrey Southerland

Elizabeth A. Matune, Assistant Attorney General, 150 E. Gay Street, 16th Floor, Columbus, Ohio 43215, for defendant-appellee, State of Ohio

HENDRICKSON, J.

{¶1} Defendant-appellant, Jeffrey Southerland, appeals a decision of the Butler County Court of Common Pleas dismissing his petition challenging his sex offender reclassification without a hearing. For the reasons outlined below, we reverse the decision of the trial court and remand.

{¶2} In December 2007, appellant received written notice from the Ohio Attorney General informing him that he had been reclassified from a sexually oriented

offender to a Tier II sex offender with the corresponding 25-year registration requirement. In January 2008, appellant filed a petition challenging his reclassification. The trial court initially stayed the proceedings pending guidance from a higher court on Ohio's newly-enacted Adam Walsh Act. The state moved to dismiss appellant's petition. Following the issuance of this court's decision in *State v. Williams*, Warren App. No. CA2008-02-029, 2008-Ohio-6195, the trial court summarily dismissed appellant's petition without a hearing. Appellant timely appeals, raising two assignments of error.

{¶13} Assignment of Error No. 1:

{¶14} "DID THE COURT ERR IN DISMISSING PLAINTIFF'S COMPLAINT WITHOUT A HEARING, AND WITHOUT NOTICE IN VIEW OF ITS PREVIOUS DECISION GRANTING RELIEF AND STAYING FURTHER PROCEEDINGS?"

{¶15} Appellant first argues that the trial court erred in dismissing his petition without a hearing. In *State v. Brewer*, Butler CA2009-02-041, 2009-Ohio-3157, this court held that a sex offender reclassified under Ohio's Adam Walsh Act is entitled to a hearing upon a timely and properly filed petition under R.C. 2950.031(E). The record indicates that appellant's petition was timely and properly filed. Therefore, on the basis of *Brewer*, we find that appellant was entitled to a hearing on his petition challenging his sex offender reclassification in accordance with R.C. 2950.031(E).

{¶16} Appellant's first assignment of error is sustained.

{¶17} Assignment of Error No. 2:

{¶18} "IS THE ADAM WALSH ACT, SENATE BILL 10 UNCONSTITUTIONAL AS APPLIED TO PLAINTIFF?"

{¶19} Appellant's second assignment of error, which challenges the constitutionality of Ohio's Adam Walsh Act, is overruled on the basis of this court's decision in *State v. Williams*, Warren App. No. CA2008-02-029, 2008-Ohio-6195

(upholding Ohio's Adam Walsh Act on numerous constitutional grounds).

{¶10} The trial court's order dismissing appellant's petition is reversed and this matter is remanded so that the trial court can conduct a hearing on appellant's petition in accordance with R.C. 2950.031(E).

{¶11} Judgment reversed and remanded.

YOUNG, P.J., concurs.

RINGLAND, J., concurs in part and dissents in part.

RINGLAND, J., concurring in part and dissenting in part.

{¶12} I respectfully dissent with the majority's resolution of the second assignment of error based upon my analysis in *Sears v. State*, Clermont App. No. CA2008-07-068, 2009-Ohio-3541, finding that the retroactive modification of judicially-determined sex offender classifications by the Adam Walsh Act violates the separation of powers doctrine. I concur with the majority's resolution of the remaining issues.