

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

RICKY LEE WILSON,	:	
Petitioner-Appellant,	:	CASE NO. CA2009-05-058
- vs -	:	<u>OPINION</u>
	:	12/30/2009
STATE OF OHIO,	:	
Respondent-Appellee.	:	

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 08-CV-70387

Donald E. Oda II, 130 East Mulberry Street, Lebanon, Ohio 45036, for petitioner-appellant

Rachel A. Hutzal, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, Ohio 45036, for respondent-appellee

RINGLAND, J.

{¶1} Petitioner-appellant, Ricky Lee Wilson, appeals a decision of the Warren 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 1996, appellant was convicted of two counts of sexual battery in violation of R.C. 2907.03(A)(5). In July 1997, the Ohio Department of Rehabilitation and Correction filed

a recommendation with the trial court that appellant be classified as a sexual predator. The court found that appellant was not a sexual predator as defined by R.C. 2950.01(E). In November 2007, appellant received written notice that he had been reclassified as a Tier III sex offender. In January 2008, appellant filed a petition challenging the reclassification. The trial court initially stayed the proceedings pending guidance from a higher court on Ohio's newly-enacted Adam Walsh Act. Following the issuance of this court's decision in *State v. Williams*, Warren App. No. CA2008-02-029, 2008-Ohio-6195, the state moved to dismiss appellant's petition. The trial court granted the motion, summarily dismissing appellant's petition without a hearing. Appellant timely appeals, raising eight assignments of error.

{¶13} Assignment of Error No. 1:

{¶14} "THE TRIAL COURT ERRED IN DENYING THE PETITIONER'S CLAIMS FOR RELIEF WITHOUT A HEARING."

{¶15} Appellant first argues that the trial court erred in dismissing his petition without a hearing. In *State v. Brewer*, Butler App. No. 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 pursuant to the mandate of R.C. 2950.031(E). *Id.* at ¶16. 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} "THE RETROACTIVE APPLICATION OF OHIO'S AWA VIOLATES THE PROHIBITION ON EX POST FACTO LAWS IN ARTICLE I, SECTION 10 OF THE UNITED STATES CONSTITUTION."

{¶9} Assignment of Error No. 3:

{¶10} "THE RETROACTIVE APPLICATION OF OHIO'S AWA VIOLATES THE PROHIBITION ON RETROACTIVE LAWS IN ARTICLE II, SECTION 28 OF THE OHIO CONSTITUTION."

{¶11} Assignment of Error No. 4:

{¶12} "RECLASSIFICATION OF PETITIONER CONSTITUTES A VIOLATION OF THE SEPARATION OF POWERS' [sic] DOCTRINE."

{¶13} Assignment of Error No. 5:

{¶14} "RECLASSIFICATION OF PETITIONER CONSTITUTES IMPERMISSIBLE MULTIPLE PUNISHMENT UNDER THE DOUBLE JEOPARDY CLAUSES OF THE UNITED STATES AND OHIO CONSTITUTIONS."

{¶15} Assignment of Error No. 6:

{¶16} "THE RESIDENCY RESTRICTIONS OF THE AWA VIOLATE DUE PROCESS."

{¶17} Assignment of Error No. 7:

{¶18} "PETITIONER CANNOT BE SUBJECTED TO THE COMMUNITY NOTIFICATION REQUIREMENTS UNDER THE AWA BECAUSE HE WAS NOT SUBJECT TO COMMUNITY NOTIFICATION REQUIREMENTS UNDER PRE-AWA LAW."

{¶19} Assignment of Error No. 8:

{¶20} "RECLASSIFICATION OF PETITIONER CONSTITUTES A BREACH OF CONTRACT AND A VIOLATION OF THE RIGHT TO CONTRACT UNDER THE OHIO AND UNITED STATES CONSTITUTIONS."

{¶21} Based upon our resolution of appellant's first assignment of error, appellant's remaining assignments of error are moot.

{¶22} Judgment reversed and remanded.

YOUNG, P.J., and HENDRICKSON, J., concur.

[Cite as *Wilson v. State*, 2009-Ohio-6927.]