[Cite as *State v. Maggy*, 2009-Ohio-3180.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Respondent-Appellee,	:	**CASE NO. 2008-T-0078**
- vs -	:	
MICHAEL J. MAGGY,	:	
Defendant-Petitioner-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2008 CV 642.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *Deena L. DeVico*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Plaintiff-Respondent-Appellee).

Michael J. Maggy, pro se, PID: A396-487, Trumbull Correctional Institution, P.O. Box 901, Leavittsburg, OH 44430-0901 (Defendant-Petitioner-Appellant).

MARY JANE TRAPP, P.J.

{¶1} Mr. Michael J. Maggy appeals from the trial court's grant of summary judgment in favor of the state, finding that Mr. Maggy was properly reclassified, pursuant to R.C. 2950.01, as a Tier III offender under the new Sexual Offender Registration and Notification Act (SORN) (also known as Senate Bill 10, Ohio's version of the Adam Walsh Act or AWA), now newly enacted R.C. Chapter 2950. The court also found that Mr. Maggy received his notice on January 9, 2008, and although it was

"untimely," he was not negatively impacted, as he had the opportunity to timely appeal his reclassification, and further, that his constitutional claims were without merit.

{¶2} We affirm, determining that Mr. Maggy was properly reclassified from a sexual predator to a Tier III offender; that his classification and duty to register arose by operation of law solely by virtue of his convictions of rape, sexual battery, and gross sexual imposition; and that when viewed through the prism of prior precedent set by the Supreme Court of Ohio, the new sexual offender registration provisions challenged by Mr. Maggy are constitutional.

{¶3} **Substantive and Procedural History**

{¶4} On September 15, 2000, at a change of plea hearing, Mr. Maggy pled guilty to two counts of rape with force, in violation of R.C. 2907.02(A)(1)(b) & (B), aggravated felonies of the first degree; one count of sexual battery, in violation of R.C. 2907.03(A)(2), a third degree felony; as well as two counts of gross sexual imposition, in violation of R.C. 2907.05(A)(4) and (A)(5), respectively felonies of the third and fourth degree.

{¶5} Mr. Maggy was sentenced several days later. Prior to announcing his sentence, the court found that Mr. Maggy had agreed in open court at his change of plea hearing that he was a sexual predator. Mr. Maggy was then sentenced to consecutive life sentences on each count of rape, four years on the count of sexual battery, four years on the third degree felony count of gross sexual imposition in violation of R.C. 2905(A)(4), and finally, twelve months on the fourth degree felony count of gross sexual imposition in violation of R.C. 2907.05(A)(5). All sentences were ordered to be served consecutively to one another.

{¶6} Mr. Maggy, who remains incarcerated, received his notice of reclassification as a Tier III Sex Offender by the Attorney General on January 9, 2008. The notice informed Mr. Maggy that his classification and registration duties upon release will change due to the new Act. He was also notified of his new duties to register and his right to contest the application of the classification and requirements.

{¶7} Mr. Maggy timely filed his petition to contest the reclassification, and several days later, the state filed a motion for summary judgment. Mr. Maggy also filed a motion for summary judgment, and the matter came to be heard by the court on the briefs and evidentiary materials supplied by the parties.

{¶8} The court found that the new sexual offender classification scheme was constitutional, that Mr. Maggy's notice was delinquent but caused no prejudice because Mr. Maggy had the opportunity to timely appeal, which he did in fact do, and that Mr. Maggy was properly classified as a Tier III sex offender pursuant to R.C. 2950.01. Thus, finding no genuine issues of fact remained for determination, the court granted the state's motion for summary judgment.

{¶9} Mr. Maggy timely appealed, raising three assignments of error:

{¶10} "[1.]The trial court erred when it failed to dismiss the action because the state failed to comply with the statutory mandated requirements for notice [sic] violation [sic] R.C. 2950.032, R.C. 2901.04, the Appellant's right to due process, equal protection rights and Article I, Section 10 of the Ohio Constitution.

{¶11} "[2.] The newest versions to [sic] R.C. 2950 violates Appellants [sic] rights to due process and equal protection under the Fourteen [sic] Amendment of the United States Constitution and Article I, Section 10 to [sic] the Ohio's Constitution.

{¶12} "[3.] The trial court erred when it retroactively applied a statute that increased both the criminal and civil penalties to a defendant that had already been sentenced under the law that was in effect at the time he committed his offense. Violating Appellant's rights to protection from Ex Post Facto laws, due process, and equal protection under the United States Article I, Section 10 and Article II, Section 28. [sic] Ohio Constitutions. [sic.]"

{¶13} **Senate Bill 10 and the New SORN Act Provisions**

{¶14} "Ohio's new sexual offender law was adopted by the Ohio General Assembly in Senate Bill 10. The legislation was enacted so that the state law would be consistent with the federal Adam Walsh Child Protection and Safety Act of 1996.

{¶15} "Prior to Senate Bill 10, when a defendant was found guilty of a sexually oriented offense, he could be classified as a sexually oriented offender, a habitual offender, or a sexual predator. The prior statutory scheme provided that a defendant's designation under the three categories would be predicated upon the nature of the underlying offense and findings of fact made by the trial court during a sexual classification hearing.

{¶16} "Under the new legislation, those three labels are no longer applicable. Instead, a defendant who has committed a sexually oriented offense can only be designated as either a sex offender or a child victim offender. There are now three tiers of sexual offenders. The extent of the defendant's registration and notification requirements will depend on the tier. Furthermore, the placement in a tier turns solely on the crime committed.

{¶17} "Another change of the sexual offender system implemented under the new law concerns the duration of the registration and notification requirements for the sex offenders. Prior to Senate Bill 10, if a defendant was deemed a sexually oriented offender, he was required to register once each year for a period of ten years, but there was no notification requirement; if he was labeled as a habitual sex offender, he had to register once every six months for 20 years, and the community could be given notice of his presence at the same rate; and if he was designated a sexual predator, the duty to register was once every three months for life, and notification could also take place at the same rate for life.

{¶18} "Under the new statutory scheme set forth in the current R.C. Chapter 2950, the registration and community notification requirements are increased for sex offenders. If the defendant's sexual offense places him in the 'Tier I' category, he is required to register once every year for a period of 15 years, but there is no community notification; if the defendant's offense falls under the 'Tier II' category, registration must take place once every six months for 25 years, and there is still no notification requirement; and, if the sexual offense places the defendant in the 'Tier III' category, the requirements are essentially the same as for a sexual predator, in that there is a duty to register once every three months for life, and community notification can occur at that same rate for life. Community notification under the new scheme requires the sheriff to give the notice of an offender's name, address, and conviction to all residents, schools, and day care centers within one thousand feet of the offender's residence. The new law also prohibits all sex offenders from residing within 1,000 feet of a school or day care center. These registration and notification requirements under the Adam Walsh Act are

retroactive and applicable to offenders whose crimes were committed before the effective date of the statute." *State v. Charette,* 11th Dist. No. 2008-L-069, 2009-Ohio-____, ¶7-11.

{¶19} Mr. Maggy agreed to his classification as a sexual predator at his original change of plea hearing, and is now automatically reclassified as a Tier III offender because rape is a Tier III offense. See R.C. 2950.01(G)(1)(a).

{¶20} **Summary Judgment Standard of Review**

{¶21} Mr. Maggy first contends that the trial court erred in granting summary judgment to the state because the Attorney General and the Department of Rehabilitation and Correction ("DRC") lost jurisdiction after December 1, 2007, to serve a written notice of his reclassification and registration duties as a Tier III offender.

{¶22} "Pursuant to Civ.R. 56(C), summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Welsh v. Ziccarelli*, 11th Dist. No. 2006-L-229, 2007-Ohio-4374, ¶36, quoting *Holik v. Richards*, 11th Dist. No. 2006-A-0006, 2006-Ohio-2644, ¶12, citing *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. "In addition, it must appear from the evidence and stipulations that reasonable minds can come to only one conclusion, which is adverse to the nonmoving party. Id., citing Civ.R. 56(C). Further, the standard in which we review the granting of a motion for summary judgment is de novo." Id., citing *Holik* at 293, citing *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 104.

{¶23} "Accordingly, '[s]ummary judgment may not be granted until the moving party sufficiently demonstrates the absence of a genuine issue of material fact. The moving party bears the initial burden of informing the trial court of the basis for the

motion and identifying those portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim.'" Id. at ¶37, citing *Brunstetter v. Keating*, 11th Dist. No. 2002-T-0057, 2003-Ohio-3270, ¶12, citing *Dresher* at 292. "Once the moving party meets the initial burden, the nonmoving party must then set forth specific facts demonstrating that a genuine issue of material fact does exist that must be preserved for trial, and if the nonmoving party does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party." Id., citing *Brunstetter*, citing *Dresher* at 293.

{¶24} "Since summary judgment denies the party his or her 'day in court' it is not to be viewed lightly as docket control or as a 'little trial.' The jurisprudence of summary judgment standards has placed burdens on both the moving and the nonmoving party. In *Dresher v. Burt*, the Supreme Court of Ohio held that the moving party seeking summary judgment bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record before the trial court that demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim. The evidence must be in the record or the motion cannot succeed. The moving party cannot discharge its initial burden under Civ.R. 56 simply by making a conclusory assertion that the nonmoving party has no evidence to prove its case but must be able to specifically point to some evidence of the type listed in Civ.R. 56(C) that affirmatively demonstrates that the nonmoving party has no evidence to support the nonmoving party's claims. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. If the moving party has satisfied its initial burden, the nonmoving party has a reciprocal burden outlined in the

last sentence of Civ.R. 56(E) to set forth specific facts showing there is a genuine issue for trial. If the nonmoving party fails to do so, summary judgment, if appropriate shall be entered against the nonmoving party based on the principles that have been firmly established in Ohio for quite some time in *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112.

{¶25} "The court in *Dresher* went on to say that paragraph three of the syllabus in *Wing v. Anchor Media, Ltd. of Texas* (1991), 59 Ohio St.3d 108, is too broad and fails to account for the burden Civ.R. 56 places upon a moving party. The court, therefore, limited paragraph three of the syllabus in *Wing* to bring it into conformity with *Mitseff*." Id. at ¶40-41.

{¶26} Thus, in *Dresher*, the Supreme Court of Ohio held that "when neither the moving nor nonmoving party provides evidentiary materials demonstrating that there are no material facts in dispute, the moving party is not entitled to a judgment as a matter of law as the moving party bears the initial responsibility of informing the trial court of the basis for the motion, and 'identifying those portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim.'" Id. at ¶42, quoting *Dresher* at 276.

{¶27} Mr. Maggy contends that the court erred in granting summary judgment to the state because he received his notice on January 9, 2008. He contends the Attorney General and the DRC "lost" jurisdiction to serve him such notice after December 1, 2007, and therefore, the new classification registration duties should not and cannot apply to him.

{¶28} **Timeliness of Receipt of Notice**

{¶29} Mr. Maggy is correct in his assertion that pursuant to R.C. 2950.032, the Attorney General was required to determine the offender's classification relative to the offender's offense between July 1, 2007 and December 1, 2007. See R.C. 2950.032(A)(1).

{¶30} Further, pursuant to R.C. 2950.032(A)(2), the DRC was required to provide such written notice between July 1, 2007 and December 1, 2007, to all such offenders, *except* that "[t]he department *** *is not required to provide the written notice to an offender *** if the attorney general included in the document provided to the particular department *** notice that the attorney general will be sending that offender *** a registered letter and that the department is not required to provide to that offender *** the written notice*." (Emphasis added.)

{¶31} It is axiomatic that statutes in pari materia are to be construed together; thus, R.C. 2950.032 must be read in conjunction with the primary notice to offender statute, R.C. 2950.03.

{¶32} R.C. 2950.03(A)(1), notice of duty to register, provides in relevant part:

{¶33} "Regardless of when the person committed the sexually oriented offense ***, if the person is an offender who is sentenced to a prison term, a term of imprisonment, or any other type of confinement for any offense, and *if on or after January 1, 2008, the offender is serving that term*, *** the official in charge of the jail, workhouse, state correctional institution, or other institution in which the offender serves the prison term, ***, shall provide the notice to the offender *before the offender is released* ***." (Emphasis added.)

{¶34} While the statutory language is a tad convoluted, Mr. Maggy's argument that the provision of the new Act cannot apply to him because he received his notice after December 1, 2007, fails because he remains incarcerated. None of his rights have been abused. His classification as a sexual predator under the prior sex offender registration framework, or as a Tier III offender under the new scheme, would be a failure only if such classification and notice occurred after his release.

{¶35} Mr. Maggy's "Notice of New Classification and Registration Duties" is a part of our record. He received the notice on January 9, 2008. The notice was dated November 30, 2007, thus it is clear that the Attorney General made the determination that Mr. Maggy was a Tier III offender on that date. The notice was then timely provided, pursuant to R.C. 2950.03(A)(1), which clearly states that regardless of when the sexually oriented offense was committed and if, on or after January 1, 2008, the offender is incarcerated for that offense, notice shall be provided before the offender is released.

{¶36} This statutory interpretation is further reinforced by a reading of R.C. 2950.033, which applies to offenders whose duties to register are scheduled to terminate on or after July 1, 2007 and prior to January 1, 2008.

{¶37} R.C. 2950.033(A)(5) states in relevant part:

{¶38} "If the offender *** is in a category described in division (A)(1)(a) or (b) of section R.C. 2950.032 *** but does not receive a notice from the department of rehabilitation and correction *** pursuant to (A)(2) of that section, *notwithstanding the failure of the offender *** to receive the registered letter or the notice, the offender's *** duty to comply with Sections R.C. 2950.04, 2950.041, 2950.05, and 2950.06 of the*

Revised Code shall continue in accordance with, and for the duration specified in, the provisions of Chapter 2950 of the Revised Code as they will exist under the changes to the provisions that will be implemented on January 1, 2008." (Emphasis added.)

{¶39} Thus, even those offenders who did not receive notice between July 1, 2007 and December 1, 2007, and whose duties were set to expire during that time period, are *still expected to comply* with the new Act. Regardless of whether those offenders received timely notice, their duties have been extended pursuant to the Act.

{¶40} Mr. Maggy received his reclassification notice on January 9, 2008, and is still incarcerated for his 2000 conviction for rape, sexual battery, and gross sexual imposition. Thus, we fail to see how he is relieved of the mandatory requirements of the Act. Indeed, even offenders whose duties were set to expire and who did not receive timely notice by December 1, 2007, are still expected to comply.

{¶41} Thus, the trial court properly granted summary judgment to the state. Mr. Maggy suffered no prejudice by the delay and he was properly reclassified as a Tier III offender, having been formerly classified as a sexual predator, and more fundamentally, having been convicted of, among his other convictions, two counts of rape with force in violation of R.C. 2907.02. See R.C. 2950.01(G)(1)(a).

{¶42} Mr. Maggy's first assignment of error is without merit.

{¶43} **Constitutional Claims**

{¶44} In his second assignment of error, Mr. Maggy contends the new Act violates his rights of due process and equal protection under the Fourteenth Amendment of the United States Constitution and Article I, Section 10 of the Ohio Constitution. Mr. Maggy raises claims of ex post facto and double jeopardy violations,

although he also raises these same claims in his third assignment of error. Specifically though, Mr. Maggy raises questions relating to recidivism and the dissemination of private information. Thus, we will review both assignments of error as one for the sake of clarity, addressing the arguments that Mr. Maggy actually made, rather than how he titled them.

{¶45} "[A] statute is presumed constitutional and before a court may declare it unconstitutional it must appear beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible." *State v. Hayden*, 96 Ohio St.3d 211, 2002-Ohio-4169, ¶7, citing *State ex rel. Dickman v. Defenbacher* (1955), 164 Ohio St.142, paragraph one of the syllabus. "Therefore, we begin with the presumption that R.C. Chapter 2950 is constitutional." *State v. Williams* (2000), 88 Ohio St.3d 513, 521.

{¶46} In our recent decisions, most notably, *State v. Swank*, 11th Dist. No. 2008-L-019, 2008-Ohio-6059, and *Charette*, we addressed these constitutional claims as applied to Senate Bill 10 and the newly enacted R.C. Chapter 2950.

{¶47} Based on the prior Supreme Court of Ohio decisions interpreting the former provisions of R.C. Chapter 2950 in *State v. Cook* (1998), 83 Ohio St.3d 404, *Williams*, and *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, we determined that the newly enacted legislation was civil, remedial, and non-punitive in nature. Thus, we determined that "the registration and address verification provisions of R.C. Chapter 2950 are *de minimis* procedural requirements that are necessary to achieve the goals of R.C. Chapter 2950." *Cook* at 412.

{¶48} **Ex Post Facto and Retroactivity Claims**

{¶49} Specifically, in *Cook*, "the [former] defendant alleged that R.C. Chapter 2950 violated the prohibition against ex post facto legislation. '"An ex post facto law punishes as a crime an act previously committed, which was innocent when done, [or] which makes more burdensome the punishment for a crime, after its commission."'" *Wilson* at ¶30, citing *Cook* at 414, quoting *Beazell v. Ohio* (1925), 269 U.S. 167, 169-170. "Accordingly the Ex Post Facto Clause, Section 10, Article I of the United States Constitution applies to criminal cases only." Id., citing *Cook* at 415, citing *California Dept. of Corr. v. Morales* (1995), 514 U.S. 499, 504. "In holding that [former] R.C. Chapter 2950 was not an ex post facto law, the court reasoned that it meant to protect the public and therefore was remedial, not punitive." Id., citing *Cook* at 417.

{¶50} In *Swank*, we noted "that the Second, Third, Fourth, Eighth, and Ninth Appellate Districts have held that S.B. 10 is civil in nature and not punitive in intent or effect and therefore not an ex post facto law.[1] See *State v. Desbiens,* 2d Dist. No. 22489, 2008-Ohio-3375; *In re Smith*, 3d Dist. No. 1-07-58, 2008-Ohio 3234; *State v. Longpre*, 4th Dist. No. 08CA3017, 2008-Ohio-3832; *State v. Holloman-Cross*, 8th Dist. No. 90351, 2008-Ohio-2189; *In re G.E.S.* Federal courts that have addressed the issue have reached the same result. See *United States v. Markel* (W.D. Ark. 2007), 2007 U.S. Dist. LEXIS 27102; see, also, *United States v. Templeton* (W.D. Okla. 2007), 2007 U.S. Dist. LEXIS 8930." Id. at ¶89.[2]

1. We note that on February 4, 2009, in *In re G.E.S.* (2009), 120 Ohio St.3d 1504, 2009-Ohio-361, the Supreme Court of Ohio accepted a discretionary appeal of *In re Smith*, 3d Dist. No. 1-07-58, 2008-Ohio-3234, as well as *In re G.E.S.*, 9th Dist. No. 24079, 2008-Ohio-4076 (referenced later in this opinion).
2. In addition, we note as we did in *Charette,* that the Supreme Court of Ohio has become more divided on the issue of whether the registration and notification statute has evolved from a remedial and civil statute into a punitive one. As Justice Lanzinger stated in her concurring in part and dissenting in part opinion in *Wilson*: "I do not believe that we can continue to label these proceedings as civil in nature. These restraints on liberty are the consequences of specific criminal convictions and should be recognized as part of the punishment that is imposed as a result of the offender's actions." See, also,

{¶51} Thus, we determined that the new provisions are not ex post facto violations.

{¶52} Mr. Maggy further contends that because he was already classified under the former scheme as a sexual predator, the new Act is being retroactively applied to him in violation against the prohibition of retroactive laws contained in Article II of the Ohio Constitution.

{¶53} What Mr. Maggy fails to realize, however, is that "a convicted felon has no reasonable expectation that his or her criminal conduct will not be subject to future legislation." *King* at ¶33, citing *Cook at* 412. "For that reason, the *Cook* court held a former version of R.C. 2950 could be applied to sex offenders who committed their crimes before the legislation took effect." Id. "The harsh consequences [of] classification and community notification *** come not as a direct result of the sexual offender law, but instead as a direct societal consequence of [the offender's] past actions." *Cook* at 413, quoting *State v. Lyttle* (Dec. 22, 1997) 12th Dist. No. CA97-03-060, 1997 Ohio App. LEXIS 5705.

{¶54} As the Second Appellate District so aptly noted in *King*: "Similarly, [Mr. Maggy,] a convicted felon, could have no reasonable expectation that [his] criminal conduct would not be subject to future versions of R.C. 2950. Indeed, *Cook* indicates that convicted sex offenders have no reasonable 'settled expectations' or vested rights concerning the registration obligations imposed on them. If the rule were otherwise, the initial version of R.C. Chapter 2950 could not have been applied retroactively in the first

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State v. Ferguson, 120 Ohio St.3d 7, 2008-Ohio-4824 (Lanzinger, J., dissenting). We believe Senate Bill 10 merits review by the Supreme Court of Ohio to address the issue of whether the current version of R.C. Chapter 2950 has been transformed from remedial to punitive law. Before that court revisits the issue, however, we, as an inferior court, are bound to apply its holdings in *Cook* and *Wilson*.

place." Id. at ¶33. Further, Senate Bill 10, expressly made the registration and notification retroactive. See R.C. 2950.04, *Swank* at ¶92.

{¶55} Thus, we determined that the Act does not violate the prohibition against retroactivity.

{¶56} **Double Jeopardy**

{¶57} The Supreme Court of Ohio addressed the double jeopardy argument in former R.C. 2950 in *Williams,* where the appellant alleged that former R.C Chapter 2950 inflicted a second punishment for a single offense. Id. at 527. The court reviewed in *Wilson* that, in *Williams,* "[r]elying on our reasoning in *Cook*, we reaffirmed that R.C. Chapter 2950 is 'neither "criminal," nor a statute that inflicts punishment' and held that there was no violation of the Double Jeopardy Clause." *Wilson* at ¶31, quoting *Williams* at 528; see, also, *State v. Gowdy* (2000), 88 Ohio St.3d 387, 398.

{¶58} Because we have determined that the new registration and notification requirements are still to be characterized as civil and non-punitive, the *Williams* holding would still be controlling as to the present version of R.C. Chapter 2950. Its application to a defendant does not constitute a second punishment prohibited by the double jeopardy position. See *Smith* at ¶38 (where the court stated it is not persuaded that the Supreme Court of Ohio would view the issues of criminality and punishment regarding the provisions of Senate Bill 10 any differently than the manner it had interpreted the former R.C. 2950 et. seq. in the *Cook* and *Williams* decisions).

{¶59} **Due Process Violations**

{¶60} In raising his due process claims, Mr. Maggy contends that the registration and reporting requirements are overly broad. In effect, he makes the argument that his

right to privacy has been violated in that he is now required to disseminate private information to the public. He further argues that his chance of recidivism is actually quite low. Mr. Maggy's contentions are without merit as the registration and notification requirements, while more onerous and burdensome, do not deprive him of a substantial liberty or property right, nor violate his procedural or substantive rights to due process.

{¶61} At the outset, we must note we already rejected these arguments in *Charette* and *Swank*. See *Swank* at ¶101-107, *Charette* at ¶22-33.

{¶62} Specifically, as to the claims of procedural due process, we determined in *Swank* that "appellant has not shown that he has been deprived of any liberty or property right by S.B. 10." Thus, we held that "S.B. 10 does not violate appellant's procedural due process rights." Id. at ¶107.

{¶63} As for the substantive due process claims, regarding dissemination of information and residency restrictions, we determined in regard to the residency requirements in *Swank* and *Charette*, that Mr. Maggy "lacks standing to challenge the constitutionality of a residency restriction unless the record shows the defendant suffered an actual deprivation of his property rights as a result of the application of such restriction to him." *Charette* at ¶31, citing *State v. Pierce*, 8th Dist. No. 88470, 2007-Ohio-3665, ¶33. Because Mr. Maggy cannot show an actual deprivation of his property rights (indeed, he is still is incarcerated for his crimes), he does not have standing to challenge the residency restriction of Senate Bill 10. Id at ¶32.

{¶64} Mr. Maggy also argues that the requirements that he personally register are so onerous because they require offenders to make periodic updates in person. Thus, he argues the new act is distinguishable from Alaska's sex offender classification

scheme, which was upheld by the United States Supreme Court in *Smith v. Doe* (2003), 538 U.S. 84.

{¶65} Mr. Maggy, however, fails to realize that "[b]oth the duty to personally register and the corresponding penalty for failing to do so existed in pre-AWA chapter 2950. In reviewing the law, the Supreme Court [of Ohio] refused to hold that a change in the frequency or duration of a sex offender's reporting requirements transformed Chapter 2950 from a remedial statute to a substantive one." *In re G.E.S.* at ¶12, citing *Cook* at 412. "Rather, the Court found that 'the registration and address verification provisions of R.C. Chapter 2950 are de minimis procedural requirements that are necessary to achieve the goals of R.C. Chapter 2950.'" Id. "This was true even though pre-AWA law criminalized an offender's failure to comply with its registration and verification requirements." Id., see *Cook* at 410-412; former R.C. 2950.06(G)(1); former R.C. 2950.99.

{¶66} Indeed, in *Cook*, the Supreme Court of Ohio explicitly found that "[t]he act of registering [in-person] does not restrain the offender in any way. Registering may cause some inconvenience[, but] *** the inconvenience is comparable to renewing a driver's license." Id. at 418.

{¶67} The Supreme Court of Ohio further noted in *Cook,* when reviewing the historical nature of the former Act, that "[r]egistration has long been a valid regulatory technique with a remedial purpose." Id. at 418. "[H]istorically the 'dissemination of such information in and of itself *** has never been regarded as punishment when done in furtherance of a legitimate governmental interest.'" *In re G.E.S.* at ¶31, quoting *Cook* at 419, quoting *E.B. v. Verniero* (C.A.3, 1997), 119 F.3d 1077, 1099-1100.

{¶68} "The United States Supreme Court echoed this logic in *Doe* ('Our system does not treat dissemination of truthful information in furtherance of a legitimate governmental objective as punishment.') *Doe* rejected the argument that SORA's (Alaska's sex offender classification scheme) registration and notification provisions resembled traditional colonial shaming punishments, which were publicly displayed for the purpose of ridiculing the offender rather than informing the public." Id., citing *Doe* at 99.

{¶69} Thus, the Supreme Court of the United States stated: "[t]he fact that Alaska posts the information on the Internet does not alter our conclusion. It must be acknowledged that notice of a criminal conviction subjects the offender to public shame, the humiliation increasing in proportion to the extent of the publicity. And the geographic reach of the Internet is greater than anything which could have been designed in colonial times. These facts do not render Internet notification punitive. The purpose and the principal effect of notification are to inform the public for its own safety, not to humiliate the offender. Widespread public access is necessary for the efficacy of the scheme, and the attendant humiliation is but a collateral consequence of a valid regulation." *King* at ¶19, quoting *Doe* at 98-99 (citations omitted).

{¶70} Further, as the Second Appellate District so aptly noted in *King*: "[m]ost of the personal information [appellant] must provide when registering is already accessible by the public. Posting some of the information on the Internet merely makes a search for it easier." Id. at ¶20, citing *Doe* at 98-99. "To the extent that some of the information *** might not be otherwise available to the public, we see nothing particularly 'shaming' about its disclosure. We see little risk of public humiliation, for example, resulting from

disclosure of [appellant's] e-mail address, [his] telephone number, [his] internet identifiers, or where [he] stores his automobiles." Id. [3]

{¶71} Thus, we determine that based on the prior precedents and interpretations of the Supreme Court of Ohio and the United States Supreme Court, and our recent decisions in *Swank* and *Charette,* these registry and notification requirements, while more onerous and burdensome, do not violate Mr. Maggy's substantive or procedural due rights.

{¶72} Mr. Maggy's second and third assignments of error are without merit.

{¶73} The judgment of the Trumbull County Court of Common Pleas is affirmed.

CYNTHIA WESTCOTT RICE, J., concurs,

COLLEEN MARY O'TOOLE, J., dissents.

3. The *King* court also noted that some of the information an offender must provide when registering as a sex offender is not subject to posting on the internet. See R.C. 2950.13(A)(11). "The disclosure of some other information is left to the discretion of the Bureau of Criminal Identification." Id. at fn. 3.