[Cite as *Pollis v. State*, 2009-Ohio-5058.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

JEFFREY FRANKLIN POLLIS,	:	**O P I N I O N**
Petitioner-Appellant,	:	**CASE NO. 2008-T-0055**
- vs -	:	
STATE OF OHIO,	:	
Respondent-Appellee.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2008 CV 288.

Judgment: Reversed and remanded.

Mark B. Marein, Marein & Bradley, 222 Leader Building, 526 Superior Avenue, Cleveland, OH 44114-1210 (For Petitioner-Appellant).

Dennis Watkins, Trumbull County Prosecutor, and *Deena L. DeVico*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Respondent-Appellee).

COLLEEN MARY O'TOOLE, J.

{¶1} Appellant, Jeffrey Franklin Pollis, appeals from the May 23, 2008 judgment entry of the Trumbull County Court of Common Pleas, granting the motion for summary judgment of appellee, the state of Ohio, indicating that he was properly reclassified as a Tier I sex offender.

{¶2} On June 11, 1998, appellant pleaded guilty to one count of gross sexual imposition, a felony of the fourth degree, in violation of R.C. 2907.05(A)(1). He was sentenced to three years of community control, ten days in jail, sixty days of electronic

monitoring, and was ordered to attend anger management classes and register as a sexually oriented offender.

{¶3} On December 3, 2007, appellant received a notice of new classification and registration duties from the Ohio Attorney General, based on Ohio's Adam Walsh Act. He was reclassified as a Tier I offender, requiring him to register personally with the local sheriff's office once a year for fifteen years.

{¶4} On January 25, 2008, appellant filed a petition to contest the reclassification and requested a hearing.

{¶5} On February 25, 2008, the state filed a motion for summary judgment pursuant to Civ.R. 56. Appellant filed a brief in opposition on May 2, 2008.

{¶6} Pursuant to its May 23, 2008 judgment entry, the trial court granted the state's motion for summary judgment. It is from that judgment that appellant filed a timely notice of appeal, asserting the following assignments of error for our review:

{¶7} "[1.] BY GRANTING SUMMARY JUDGMENT THE TRIAL COURT DENIED APPELLANT HIS ABSOLUTE, STATUTORY RIGHT TO A HEARING TO CONTEST WHETHER THE NEW REGISTRATION REQUIREMENTS OF THE ADAM WALSH ACT APPLIED AT ALL TO HIM.

{¶8} "[2.] THE TRIAL COURT ERRED BY GRANTING SUMMARY JUDGMENT IN THE FACE OF GENUINE ISSUES OF MATERIAL FACT RELATING TO REPRESENTATIONS MADE TO APPELLANT PRIOR TO ACCEPTING HIS PLEA.

{¶9} "[3.] THE TRIAL COURT ERRED BY GRANTING SUMMARY JUDGMENT ON THE GROUND THAT THE AWA VIOLATES CONSTITUTIONAL GUARENTEES (sic) ENJOYED BY APPELLANT."

{¶10} We will address appellant's assignments of error out of order.

{¶11} In his third assignment of error, appellant contends that the trial court erred by granting summary judgment on the ground that the Adam Walsh Act violates various constitutional guarantees. Specifically, appellant asserts the following five issues for our review:

{¶12} "[1.] AWA Imposes Punishment in Violation of Ohio's Double Jeopardy Clause.

{¶13} "[2.] AWA Violates the Due Process Clause of the Ohio Constitution[.]

{¶14} "[3.] AWA Violates the Ohio Constitution's Separation of Powers Doctrine[.]

{¶15} "[4.] AWA Violates The Ohio Constitution's Retroactivity Clause[.]

{¶16} "[5.] AWA Violates the Ohio Constitution's Contract Clause."

{¶17} Initially, we note that under the new legislation, the basic system for sexual offender classification was altered considerably. Prior to S.B. 10, if a criminal defendant was found guilty of a sexually oriented offense which was not exempted from any registration, he could be classified as a sexually oriented offender, a habitual sex offender, or a sexual predator. The prior statutory scheme also provided that a defendant's designation under the three categories was to be predicated upon the nature of the underlying offense and findings of fact made by the trial court during a sexual classification hearing.

{¶18} Pursuant to the new law, the foregoing three "labels" for a sexual offender 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.

Furthermore, the extent of the defendant's registration and notification requirements will depend upon his placement in one of three "tiers" of sexual offenders. The determination of which tier is applicable to a given defendant turns solely upon the exact crime or offense he has committed.

{¶19} The second major change of the sexual offender system concerns the duration of the registration and notification requirements. Prior to S.B. 10, the governing law generally provided for the following: (1) 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; (2) if he was labeled as a habitual sex offender, he had to register once every six months for twenty years, and the community could be given notice of his presence at the same rate; and (3) 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. Under the new scheme, the registration and notification requirements are substantially different: (1) 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 fifteen years, but there is no community notification; (2) if the defendant's offense falls under the "Tier II" category, registration must take place once every six months for twenty-five years, and there is still no notification requirement; and (3) 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.

{¶20} As to the specific requirements of registration, the original version of the

"sexual offender" law stated that the defendant only had to register with the sheriff of the county where he was a resident. See *State v. Cook* (1998), 83 Ohio St.3d 404, 408. Under the latest version of the scheme, though, the places where registration is required has been expanded to now include: (1) the county where the offender lives; (2) the county where he attends any type of school; (3) the county where he is employed if he works there for a certain number of days during the year; (4) if the offender does not reside in Ohio, any county of this state where he is employed for a certain number of days; and (5) if he is a resident of Ohio, any county of another state where he is employed for a certain number of days. Similarly, the extent of the information which must be provided by an offender has increased. As part of the general registration form, the offender must indicate: his full name and any aliases, his social security number and date of birth; the address of his residence; the name and address of his employer; the name and address of any type of school he is attending; the license plate number of any motor vehicle he owns; the license plate number of any vehicle which he operates as part of his employment; a description of where his motor vehicles are typically parked; his driver's license number; a description of any professional or occupational license which he may have; any e-mail addresses; all internet identifiers or telephone numbers which are registered to, or used by, the offender; and any other information which is required by the bureau of criminal identification and investigation.

{¶21} We will address appellant's five issues under his third assignment of error out of order.

{¶22} With regard to his first issue, appellant argues that the Adam Walsh Act violates Ohio's Double Jeopardy Clause. We agree.

{¶23} The Supreme Court of Ohio has held:

{¶24} "The Fifth Amendment to the United States Constitution provides that 'no person shall (***) be subject for the same offence to be twice put in jeopardy of life or limb.' Similarly, Section 10, Article I, Ohio Constitution provides, 'No person shall be twice put in jeopardy for the same offense.'" *State v. Zima*, 102 Ohio St.3d 61, 2004-Ohio-1807, at ¶16.

{¶25} Here, in 1998, appellant pleaded guilty to one count of gross sexual imposition. He was sentenced for this offense and adjudicated a sexually oriented offender. Appellant had an expectation of finality in that his reporting requirements would end in 2008. However, additional punitive measures have now been placed on appellant, as he is required to comply with the new registration requirements once a year for fifteen years. Essentially, appellant is being punished a second time for the same offense. The application of the current version of R.C. 2950 to appellant violates the Double Jeopardy Clauses of the Ohio and United States Constitutions.

{¶26} Appellant's first issue is with merit.

{¶27} With respect to his third issue, appellant alleges that the Adam Walsh Act violates the Separation of Powers Doctrine. We agree.

{¶28} As this court stated in *Spangler v. State*, 11th Dist. No. 2008-L-062, 2009-Ohio-3178, at ¶45-46:

{¶29} "In the third assignment of error, Spangler maintains that the amended provisions of the Sex Offender Registration and Notification Act violate the constitutional doctrine of separation of powers.

{¶30} "'Although the Ohio Constitution does not contain explicit language establishing the doctrine of separation of powers, it is inherent in the constitutional framework of government defining the scope of authority conferred upon the three separate branches of government.' *State v. Sterling*, 113 Ohio St.3d 255, 2007-Ohio-1790, at ¶22, ***. 'The essential principle underlying the policy of the division of powers of government into three departments is that powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments, and further that none of them ought to possess directly or indirectly an overruling influence over the others.' *State ex rel. Bryant v. Akron Metro Park Dist.*, (1929), 120 Ohio St. 464, 473, ***." (Parallel citations omitted.)

{¶31} In *Spangler*, this court further held, at ¶55-63:

{¶32} "'The administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers.'" *State ex rel. Johnston v. Taulbee* (1981), 66 Ohio St.2d 417, ***, at paragraph one of the syllabus. '(I)t is well settled that the legislature cannot annul, reverse or modify a judgment of a court already rendered.' *Bartlett v. Ohio* (1905), 73 Ohio St. 54, 58, ***; *Plaut v. Spendthrift Farm, Inc.* (1995), 514 U.S. 211, 219, *** (Congress may not interfere with the power of the federal judiciary 'to render dispositive judgments' by 'commanding the federal courts to reopen final judgments') (citation omitted).

{¶33} "Spangler raises a similar argument under his seventh assignment of error. 'A judgment which is final by the laws existing when it is rendered cannot constitutionally be made subject to review by a statute subsequently enacted.' *Gompf*

v. Wolfinger (1902), 67 Ohio St. 144, ***, at paragraph three of the syllabus. 'That the conclusions are uniform upon the proposition that a judgment which is final by the statutes existing when it is rendered is an end to the controversy, will occasion no surprise to those who have reflected upon the distribution of powers in such governments as ours, and have observed the uniform requirement that legislation to affect remedies by which rights are enforced must precede their final adjudication.' Id. at 152-153.

{¶34} "A determination of an offender's classification under former R.C. Chapter 2950 constituted a final order. *State v. Washington* [Nov. 2, 2001], 11th Dist. No 99-L-015, ***, 2001 Ohio App. LEXIS 4980 at *9 ('a defendant's status as a sexually Oriented offender (***) arises from a finding rendered by the trial court, which in turn adversely affects a defendant's rights by the imposition of registration requirements'); *State v. Dobrski*, 9th Dist. No. 06CA008925, 2007-Ohio-3121, at ¶6 ("[i]nasmuch as a sexual predator classification is an order that affects a substantial right in a special proceeding, it is final and appealable'). Accordingly, if either party failed to appeal such a determination within thirty days, as provided for in App.R. 4(A), the judgment became settled. Subsequent attempts to overturn such judgments have been barred under the principles of res judicata. See *State v. Lucerno*, 8th Dist. No. 89039, 2007-Ohio-5537, at ¶9 (applying res judicata where the State failed to appeal the lower court's determination that House Bill 180/Megan's Law was unconstitutional: 'the courts have barred sexual predator classifications when an initial classification request had been dismissed on the grounds that the court believed R.C. Chapter 2950 to be unconstitutional') (citations omitted).

{¶35} "Since Spangler's classification as a sexually oriented offender with definite registration requirements constituted a final order of the lower court, Spangler cannot, under separation of powers and res judicata principles, now be reclassified under the provisions of the amended Act with differing registration requirements.

{¶36} "The State relies upon the decisions of other appellate districts which have held the amendments do not vacate 'final judicial decisions without amending the underlying applicable law' or 'order the courts to reopen a final judgment.' *State v. Linville*. 4th Dist. No. 08CA3051, 2009-Ohio-313, at ¶23, citing *Slagle v. State*, 145 Ohio Misc.2d 98, 2008-Ohio-593, at ¶21, ***. According to these cases, 'the Assembly has enacted a new law, which changes the different sexual offender classifications and time spans for registration: requirements, among other things, and is requiring that the new procedures be applied to offenders currently registering under the old law or offenders currently incarcerated for committing a sexually oriented offense.' *Slagle*, 2008-Ohio-593, at ¶21, ***.

{¶37} "It does not matter that the current Sex Offender Act formally amends the underlying law and does not order the courts to reopen final judgments. The fact remains that the General Assembly 'cannot annul, reverse or modify a judgment of a court already rendered.' *Bartlett*, 73 Ohio St. at 58. Spangler's reclassification, as a practical matter, nullifies that part of the court's April 27, 2001 Judgment ordering him to register for a period of ten years as a sexually oriented offender. To assert that the General Assembly has created a new system of classification does not solve the problem that Spangler's original classification constituted a final judgment. There is no

exception to the rule that final judgments may not be legislatively annulled in situations where the Legislature has enacted new legislation.

{¶38} "It is also argued that the Ohio Supreme Court has characterized the registration and notification requirements of the Sex Offender Act as 'a collateral consequence of the offender's criminal acts,' in which the offender does not possess a reasonable expectation of finality. [*State v.*] *Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, at ¶34, ***; *Linville*, 2009-Ohio-313, at ¶24 (citation omitted).

{¶39} "These arguments are similarly unavailing. In *Ferguson*, as in *Cook*, the Supreme Court did not consider the argument that the enactment of House Bill 180/Megan's Law overturned a valid, final judgment. Rather, the Court was asked to determine whether retroactive application of the Sex Offender Act violated the ex post facto clause or the prohibition against retroactive legislation. The Court did not consider the arguments based on separation of powers and res judicata raised herein. In *Cook*, the Sex Offender Act was applied retroactively to persons who had not been previously classified as sexual offenders. There were no prior judicial determinations regarding the offenders' status as sexual offenders. Thus, the Supreme Court could properly state that the new burdens imposed by the law did not 'impinge on any reasonable expectation of finality' the offenders had with respect to their convictions. 83 Ohio St.3d at 414.

{¶40} "In the present case, Spangler had every reasonable expectation of finality in the trial court's April 27, 2001 Judgment Entry, i.e., that he would have to comply with five years of community control sanctions, pay the fine of $350, and register for a period of ten years as a sexually oriented offender." (Parallel citations omitted.)

{¶41} Like Spangler, appellant, in the present case, also had every reasonable expectation of finality in the trial court's 1998 judgment entry in which he was sentenced to three years of community control, ten days in jail, sixty days of electronic monitoring, and was ordered to attend anger management classes and register as a sexually oriented offender for a period of ten years.

{¶42} Appellant's third issue is with merit.

{¶43} With regard to his fourth issue, appellant maintains that the retroactive application of Ohio's Adam Walsh Act violates the prohibition against retroactive laws in Article II, Section 28 of the Ohio Constitution, which provides, in pertinent part: "[t]he general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts ***[.]" We agree.

{¶44} "'The analysis of claims of unconstitutional retroactivity is guided by a binary test. We first determine whether the General Assembly expressly made the statute retrospective. *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, ¶10 ***. If we find that the legislature intended the statute to be applied retroactively, we proceed with the second inquiry: whether the statute restricts a substantive right or is remedial. Id. If a statute affects a substantive right, then it offends the constitution. *Van Fossen* (*v. Babcock & Wilcox Co*. (1988)), 36 Ohio St.3d (100,) at 106 ***.' [*State v.*] *Ferguson*, [120 Ohio St.3d 7, 2008-Ohio-4824,] at ¶13." *State v. Swank*, 11th Dist No. 2008-L-019, 2008-Ohio-6059, at ¶91. (Parallel citations omitted.)

{¶45} A statute is "substantive" if it: (1) impairs or takes away vested rights; (2) affects an accrued substantive right; (3) imposes new burdens, duties, obligations or liabilities regarding a past transaction; (4) creates a new right from an act formerly

giving no right and imposing no obligation; (5) creates a new right; or (6) gives rise to or takes away a right to sue or defend a legal action. *Van Fossen*, supra, at 107. A later enactment does not attach a new disability to a past transaction in the constitutional sense unless the past transaction "created at least a reasonable expectation of finality." *State ex rel. Matz v. Brown* (1988), 37 Ohio St.3d 279, 281. "*Except* with regard to constitutional protections against ex post facto laws, ***, felons have no reasonable right to expect that their conduct will never thereafter be made the subject of legislation." (Emphasis added.) Id. at 281-282.

{¶46} The foregoing establishes that S.B. 10 is an unconstitutional retroactive law, as applied to appellant. By its terms, it applies retroactively. Second, it attaches new burdens and disabilities to a past transaction, since it violates the constitutional protections against ex post facto laws.

{¶47} Appellant's fourth issue is with merit.

{¶48} With respect to his fifth issue, appellant stresses that the Adam Walsh Act violates the Ohio Constitution's contract clause. We agree.

{¶49} Again, Article II, Section 28 of the Ohio Constitution provides in pertinent part: "[t]he general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts ***[.]"

{¶50} Analysis under Section 28, Article II, is incomplete, without enquiring whether S.B. 10, as applied to appellant, violates the ban against laws impairing the obligation of contract. We find it does.

{¶51} When analyzing whether a law violates the ban against the impairment of contracts, this court applies a tripartite test. *Trumbull Cty. Bd. of Commrs. v. Warren*

(2001), 142 Ohio App.3d 599, 602-603. First, there must be a determination if a contractual relation exists. Id. at 602. If it does, we must ascertain whether a change in the law impairs that relationship. Id. at 602-603. Finally, we must determine if that impairment is substantial. Id. at 603.

{¶52} "It is well established that a plea agreement is viewed as a contract between the State and a criminal defendant. *Santobello v. New York* (1971), 404 U.S. 257, ***. Accordingly, if one side breaches the agreement, the other side is entitled to either rescission or specific performance of the plea agreement. Id., at 262." *State v. Walker*, 6th Dist. No. L-05-1207, 2006-Ohio-2929, at ¶13. (Parallel citations omitted.) Ohio courts have noted that, in the main, the contract is completely executed once the defendant has pleaded guilty, and the trial court has sentenced him or her. See, e.g., *State v. McMinn* (June 16, 1999), 9th Dist. No. 2927-M, 1999 Ohio App. LEXIS 2745, at 11; accord, *State v. Pointer*, 8th Dist. No. 85195, 2005-Ohio-3587, at ¶9. However, to the extent the plea agreement contains further promises, the contract remains executory, and may be enforced by either party. See, e.g., *Parsons v. Wilkinson* (S.D. Ohio 2006), Case No. C2-05-527, 2006 U.S. Dist. LEXIS 54979 (allegation by inmate that plea agreement superseded parole board's authority regarding timing of parole hearing sufficient to withstand state attorney general's motion to dismiss in Section 1983 action), citing *Layne v. Ohio Adult Parole Auth.*, 97 Ohio St.3d 456, 2002-Ohio-6719, at ¶28; see, also, *McMinn*, supra, at 11, fn. 6.

{¶53} Clearly, appellant's plea agreement contained further terms, beyond his agreement to plead guilty to a certain charge, followed by sentencing by the trial court. The state implied those terms into the agreement as a matter of law, pursuant to former

R.C. Chapter 2950. As a consequence of the particular charge to which he pleaded guilty, he was eventually found to be a sexually oriented offender. Thus, his plea, as a matter of law, contained the terms that he comply with the registration requirements attendant upon that classification.

{¶54} Thus, we find that appellant's plea agreement with the state remained an executory contract at the time of his reclassification under S.B. 10, meeting the first requirement for determining if a law breaches the ban on impairment of contracts. *Trumbull Cty. Bd. of Commrs.*, supra, at 602.

{¶55} It appears that the second part of the test – whether a change in the law has impaired the contract established between appellant and the state, *Trumbull Cty. Bd. of Commrs.* at 602-603, is also met by S.B. 10. By changing his classification from "sexually oriented offender" to "Tier I" offender, the state has unilaterally imposed new affirmative duties upon appellant in relation to the contract. Further, the third part of the test for determining if a law unconstitutionally impairs a contract – i.e., whether the impairment is substantial, *Trumbull Cty. Bd. of Commrs.* at 603 – is obviously fulfilled, since the duties imposed upon Tier I offenders are greater in number and duration than those which were imposed upon sexually oriented offenders.

{¶56} Consequently, we find that the application of S.B. 10 to appellant violates the prohibition in Article II, Section 28 of the Ohio Constitution against laws impairing

the obligation of contracts.[1] S.B. 10 may not be applied to any person who entered a plea agreement with the state, and who went unclassified or was classified an "habitual sex offender" under former R.C. Chapter 2950 as it existed from 1963 until the 1997 amendments. It may not be applied to those who entered plea agreements with the state following the 1997 amendments, and who went unclassified, or were classified as "sexually oriented offenders" or "habitual sex offenders" under those amendments.

{¶57} Appellant's fifth issue is with merit.

{¶58} In his second issue, appellant stresses that the Adam Walsh Act violates the Due Process Clause of the Ohio Constitution, and that he was denied a hearing.

{¶59} Based on the foregoing, this issue has been rendered moot, and thus will not be addressed in this opinion. See App.R. 12(A)(1)(c); *State v. Miller* (1996), 113 Ohio App.3d 606, 610.

{¶60} Appellant's third assignment of error is with merit.

{¶61} In his first assignment of error, appellant argues that by granting the state's motion for summary judgment, the trial court denied his absolute statutory right

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1. We recognize that other appellate courts have reached contrary conclusions. Thus, in *Sigler v. State*, 5th Dist. No. 08-CA-79, 2009-Ohio-2010, the Fifth District rejected a breach of contract argument on the basis that members of one branch of government (i.e., prosecutors, representing the executive) cannot bind future actions by the legislature. This seems beside the point: of course the legislature can change the law. We merely hold it cannot change substantially the terms of a civil contract previously entered by the state without consideration. The *Sigler* court further relied upon the doctrine of "unmistakability" in reaching its conclusion. That doctrine holds that a statute will not be held to create contractual rights binding on future legislatures, absent a clearly stated intention to do so. Again, this argument seems not to deal with the question presented. We are not holding that former R.C. Chapter 2950 created any contractual rights at all on the part of persons classified thereunder. Rather, we are holding that the valid plea agreements entered by the state with defendants are contracts incorporating the terms of the classification made.

to a hearing to contest whether the new registration requirements of the Adam Walsh Act applied to him.

{¶62} In his second assignment of error, appellant alleges that the trial court erred by granting summary judgment in the face of genuine issues of material fact relating to representations made to him prior to accepting his plea.

{¶63} Based on our disposition of appellant's third assignment of error, his first and second assignments of error have been rendered moot, and thus will not be addressed in this opinion. See App.R. 12(A)(1)(c); *Miller*, supra, at 610.

{¶64} For the foregoing reasons, appellant's third assignment of error is well-taken, and his first and second assignments of error are moot. The judgment of the Trumbull County Court of Common Pleas is reversed and this matter is remanded for further proceedings consistent with this opinion. It is ordered that appellee is assessed costs herein taxed. The court finds there were reasonable grounds for this appeal.

TIMOTHY P. CANNON, J., concurs in judgment only with Concurring Opinion,

DIANE V. GRENDELL, J., concurs in part/dissents in part with a Concurring/Dissenting Opinion.

TIMOTHY P. CANNON, J., concurring in judgment only.

{¶65} I concur in the ultimate judgment reached by the majority, albeit for different reasons. I would follow this court's opinion in *State v. Ettenger*, 11th Dist. No. 2008-L-054, 2009-Ohio-3525. I do not believe that the application of the Adam Walsh Act to Pollis violates the doctrine of separation of powers. Id. at ¶75-79. Instead, I

would hold that application of the Adam Walsh Act to Pollis violates the Ex Post Facto Clause of the United States Constitution and the Retroactivity Clause of the Ohio Constitution. Id. at ¶10-59. Pollis had an expectation of finality that his prior adjudication as a sexually-oriented offender would result in a finite, ten-year reporting period.

{¶66} I note that this court has found merit to an argument that reclassification under the Adam Walsh Act constituted a breach of contract, violating the offender's right to contract under the Ohio and United States Constitutions. Id. at ¶60-67. However, the record in this matter does not contain any evidence to support Pollis' assertion that the state agreed to a sexually-oriented offender classification. There is no copy of the prior plea agreement from the underlying case in Trumbull County in the record before this court. Nor does the record contain a transcript of the plea hearing showing the state's purported agreement. This court has consistently held that "'an appellate court's review is strictly limited to the record that was before the trial court, no more and no less.'" *Condron v. Willoughby Hills*, 11th Dist. No. 2007-L-015, 2007-Ohio-5208, at ¶38. (Citation omitted.) Thus, Pollis cannot demonstrate his claimed error that the application of the Adam Walsh Act violates his right to contract.

{¶67} The judgment of the trial court should be reversed.

DIANE V. GRENDELL, J., concurs in part, dissents in part, with a Concurring/ Dissenting Opinion.

{¶68} I concur with the judgment ultimately reached by the majority, that Pollis may not be constitutionally reclassified under the provisions of the Adam Walsh Act. I

further concur in the majority's holding that Pollis' reclassification under the Adam Walsh Act violates the separation of powers doctrine. Pollis' duty to register as a sex offender and provide appropriate notification as required by his original sentencing order remains in full force and effect.

{¶69} I dissent, however, from the majority's conclusion that the retroactive application of the Adam Walsh Act violates the double jeopardy, retroactivity, and contract clauses of the Ohio Constitution for the reasons set forth in *McCostlin v. State*, 11th Dist. No. 2008-L-117, 2009-Ohio-4097, *Naples v. State*, 11th Dist. No. 2008-T-0092, 2009-Ohio-3938, and *Spangler v. State*, 11th Dist. No. 2008-L-062, 2009-Ohio-3178.