

[Cite as *Toles v. State*, 2009-Ohio-4316.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

BRIAN KEITH TOLES	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
	:	Hon. W. Scott Gwin, J.
Petitioner-Appellee	:	Hon. William B. Hoffman J.
	:	
-vs-	:	
	:	Case No. 08-CA-171
STATE OF OHIO	:	
	:	
Respondent-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil appeal from the Richland County Court of Common Pleas, Case No. 08-CV-176D

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: August 10, 2009

APPEARANCES:

For Petitioner-Appellee

BRIAN TOLES PRO SE
1319 Walnut Ave NE, #32
Canton OH 44714

For Respondent-Appellant

FRANK ARDIS, JR.
KIRSTEN PSCHOLKA-GARTNER
Richland County Prosecutor's Office
38 South Park
Mansfield, OH 44902

Gwin, J.

{¶1} Respondent-appellant the State of Ohio appeals a judgment of the Court of Common Pleas of Richland County, Ohio, which found Senate Bill 10, Ohio's Sexual Offender classification and registration scheme, to be unconstitutional in its entirety. Petitioner-appellee is Brian Keith Toles. Appellant assigns four errors to the trial court:

{¶2} "I. WHETHER BEYOND A REASONABKE [SIC] DOUBT, SENATE BILL 10 AND THE CONSTITUTIONAL PROVISIONS CITED BY THE TRIAL COURT ARE CLEARLY INCOMPATIBLE, AND WHETHER THERE IS NO SET OF CIRCUMSTANCES UNDER WHICH THE SENATE BILL 10 WOULD BE VALID. THE TRIAL COURT PURPORTED TO INVALIDATE THE LEGISLATION, RATHER THAN THE STATUTORY PROVISIONS ACTUALLY AT ISSUE IN THIS MATTER. HENCE, BY INVALIDATING THE "ADAM WALSH ACT," THE COURT APPARENTLY PURPORTED TO INVALIDATE EVERY STATUTE [SIC] AMENDED BY THE SB 10, DESPITE THE NARROW CLAIM BEFORE IT. THE COURT BELOW DID NOT PROPERLY APPLY, OR SUBSTANTIATE DIVERGENCE FROM, THE PRESUMPTION OF CONSTITUTIONALITY.

{¶3} "II. WHETHER SENATE BILL 10'S LEGISLATIVE ADJUSTMENT TO THE FREQUENCY AND DURATION OF APPELLE'S [SIC] PREEXISTING DUTY TO REGISTER RENDERED THE STATUTE UNCONSTITUTIONALLY RETROACTIVE. A STATUTE FOUND TO BE RETROACTIVE IS ONLY UNCONSTITUTIONAL IF IT SIGNIFICANTLY BURDENS A VESTED SUBSTANTIVE RIGHT, BUT NT IF IT IS REMEDIAL. AS THE Ohio SUPREME COURT HAS CONSISTENTLY HELD UNDER THE STATUTORY FRAMEWORK AMENDED BY THE SENATE BILL 10, THAT

FRAMEWORK IS REMEDIAL IN NATURE. THE GENERAL ASSEMBLY EXPRESSED ITS INTENT THAT R.C. CHAPTER 2950, AS AMENDED, REMAIN REMEDIAL IN NATURE.

{¶14} “III. WHETHER SENATE BILL 10’S ADJUSTMENT TO THE FREQUENCY AND DURATION OF APPELLEE’S PRE-EXISTING DUTY TO REGISTER CONSTITUTED SUCCESSIVE PUNISHMENT IN VIOLATION OF THE *EX POST FACTO* CLAUSE. IT WAS, INSTEAD, A REMEDIAL, CIVIL STATUTE THAT DID NOT IMPACT OFFENDERS’ SENTENCES FOR THE CRIMES THEY COMMITTED.

{¶15} “IV. WHETHER A PLEA AGREEMENT BETWEEN AN OFFENDER AND THE PROSECUTING ATTORNEY CREATED A VESTED, SETTLED EXPECTATION THAT THE OFFENDER’S CLASSIFICATION WOULD NEVER CHANGE. THE CLASSIFICATIONS OF SB 10, AND PRIOR CLASSIFICATIONS IMPOSED PURSUANT TO STATUTE BY THE COURT, DO NOT, AND DID NOT, CREATE THE EXPECTATION THAT CONVICTED SEX OFFENDERS WOULD NEVER AGAIN BE THE SUBJECT OF LEGISLATIVE ACTION.”

{¶16} Appellee was convicted of one count of gross sexual imposition in Stark County Court of Common Pleas in 1996. He was sentenced to two years incarceration and ordered to register as a sex offender for ten years. The record does not state whether appellee’s conviction was the result of a plea agreement.

{¶17} Appellee received a notice of new classification and registration duties under R.C. 2950.01 et seq., as amended by Senate Bill 10, also known as the “Adam Walsh Act”. His new classification is Tier II and he is to register for twenty five years. The statute as amended was effective July 1, 2007, after appellee’s conviction and

sentencing. Appellee contested the reclassification, asserting the new legislation violates several provisions of the Ohio and United States Constitutions, and imposes new obligations and additional substantial burdens on him. He also alleged the change in registry requirements directly violates his original plea agreement.

{¶8} The trial court found Senate Bill 10 is unconstitutional both facially and as applied to appellee because it violates the prohibitions against both retroactive and ex post facto laws. The trial court cited its decision in *Sigler v. State*, Richland Common Pleas Case No. 07CV1863, and granted judgment in favor of appellee.

{¶9} The State of Ohio appealed the matter to this court.

I, II, III, & IV

{¶10} In each assignment of error, appellant argues the trial court erred in finding Senate Bill 10 to be unconstitutional on multiple grounds. We agree.

{¶11} The court cited its decision in *Sigler*, supra, wherein it found Senate Bill 10 unconstitutional. However, this court has since reversed the court's decision. *Sigler v. State*, Richland App. No. 08-CA-79, 2009-Ohio-2010. In *Sigler*, we found, as courts across Ohio have repeatedly held, Senate Bill 10 is constitutional and does not violate prohibitions against retroactive or ex post facto laws. *Id.* at paragraph 89.

{¶12} A portion of appellant's assignment of error IV may be inapplicable here because the prior sentence may not have been the result of a plea bargain, but we find the prior classification system did not create the expectation that appellee will never be the subject of further legislative action.

{¶13} It is also appears the new classification order has extended appellee's registration requirements from ten years to twenty five, and the record does not state if

or when the original ten years expired. The trial court did not address this issue in the instant case, but should consider it on remand.

{¶14} In accord with our previous holding in *Sigler*, each of appellant's assignments of error is sustained.

{¶15} For the foregoing reasons, the judgment of the Court of Common Pleas, Richland County, Ohio, is reversed, and the cause is remanded to the court for further proceedings in accord with law and consistent with this opinion.

By Gwin, J.,
Farmer, P.J. and
Hoffman, J., concur

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. WILLIAM B. HOFFMAN

WSG:clw 0804

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

BRIAN KEITH TOLES	:	
	:	
Petitioner-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
STATE OF OHIO	:	
	:	
Respondent-Appellant	:	CASE NO. 08-CA-171

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas, Richland County, Ohio, is reversed, and the cause is remanded to the court for further proceedings in accord with law and consistent with this opinion. Costs to appellee.

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. WILLIAM B. HOFFMAN