

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DARRYL COOK	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
	:	Hon. Julie A. Edwards, J.
Petitioner-Appellee	:	Hon. Patricia A. Delaney, J.
	:	
-vs-	:	
	:	Case No. 2008-CA-320
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-391D

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: August 25, 2009

APPEARANCES:

For Petitioner-Appellee

For Respondent-Appellant

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Gwin, P.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 latest sexual offender classification registration scheme, is unconstitutional in its entirety. Petitioner-appellee is Darryl Cook. 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 NOT 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} Over twenty years ago, appellee was convicted in the Cuyahoga County Common Pleas Court of various offenses, including rape. In December, 2007, appellee received a notice of new classification and registration duties pursuant to R.C. 2950.01 et seq., as amended by Senate Bill 10 and effective January 1, 2008. Appellee challenged the classification and registration requirements, and argued Senate Bill 10 violates multiple provisions of the Ohio and United States Constitution. The trial court cited its opinion in *Sigler v. State*, Richland County Court of Common Pleas, No. 07-CV-1863, wherein it found Senate Bill 10 is unconstitutional.

I, II, III, & IV

{¶7} During the pendency of this case, this court reversed the trial court's decision in *Sigler*, supra, see *Sigler v. State*, Richland 08-CA-79, 2009-Ohio-2010. This case raises identical arguments.

{¶8} We note although the State argues Senate Bill 10 has merely adjusted appellee's pre-existing duty to register, in the trial court appellee asserted he had never been ordered to register prior to this newest legislation. Even so, the Supreme Court has held new sex offender registration and notification provisions may be imposed on past offenders. *Sigler* at paragraph 43, citing *State v. Cook*, 83 Ohio St.3d 404, 2008-Ohio-291, 700 N.E.2d 570; *State v. Williams*, Warren Co. App. No. CA2008-02-029, 2008-Ohio-6195. Further, we find appellee's prior history does not create a vested, settled expectation he would never be the subject of legislative action.

{¶9} Each of the assignments of error is sustained.

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

By Gwin, P.J.,

Edwards, J., and

Delaney, J., concur

HON. W. SCOTT GWIN

HON. JULIE A. EDWARDS

HON. PATRICIA A. DELANEY

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

DARRYL COOK	:	
	:	
Petitioner-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
STATE OF OHIO	:	
	:	
	:	
Respondent-Appellant	:	CASE NO. 2008-CA-320

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

HON. W. SCOTT GWIN

HON. JULIE A. EDWARDS

HON. PATRICIA A. DELANEY