[Cite as *Beck v. State*, 2010-Ohio-669.]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

MARCUS BECK,	:	APPEAL NO. C-090213 TRIAL NO. SP-0800615
Petitioner-Appellant,	:	*D E C I S I O N.*
vs.	:	
STATE OF OHIO,	:	
Respondent-Appellee.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: February 26, 2010

Dinsmore & Shohl, *LLP*, *Michael Newman*, and *Christopher R. McDowell*, for Petitioner-Appellant,

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Paula E. Adams*, Assistant Prosecuting Attorney, for Respondent-Appellee.

Please note: This case has been removed from the accelerated calendar.

DINKELACKER, Judge.

{¶1} On January 18, 1996, petitioner-appellant Marcus Beck pleaded guilty in a plea bargain to one count of sexual battery and one count of receiving stolen property. The court accepted Beck's pleas, found him guilty, and imposed sentence. No sexual-offender-classification hearing was held prior to Beck's release from the Ohio Department of Corrections in December of 1997. Beck was not notified that he was required to register as a sex offender under former R.C. Chapter 2950, and he did not do so.

{¶2} In 2007, the General Assembly enacted Am.Sub.S.B. No. 10 ("Senate Bill 10") to implement the federal Adam Walsh Child Protection and Safety Act of 2006. Senate Bill 10 amended various sections of R.C. Chapter 2950. Beck, who had never registered as a sex offender, was notified that he had been "reclassified" under Senate Bill 10 as a Tier III sex offender and that he was required to register with the local sheriff every 90 days for life.

{¶3} Beck filed an R.C. 2950.031(E) petition to contest his reclassification, challenging the constitutionality of Senate Bill 10. He also filed an R.C. 2950.11(F)(2) motion for immediate relief from the community-notification provisions, which the trial court ultimately granted. After a hearing, the trial court overruled Beck's constitutional challenges to Senate Bill 10 and denied his R.C. 2950.031(E) petition.

{¶4} Beck has filed an appeal, raising eight assignments of error for our review. We have requested supplement briefs from counsel on the question whether Senate Bill 10 can be applied to classify Beck as a Tier III sex offender where he had pleaded guilty to sexual battery and receiving stolen property in 1996, had been released from his prison sentence in December 1997 without ever being assigned a sexual-offender classification by a court, had never registered as a sexual offender

under former R.C. Chapter 2950, and had received a letter from the Attorney General informing him that he was now classified as a Tier III sex offender.

{¶5} Former R.C. 2950.04(A)(1)(a) provided that "[r]egardless of when the sexually oriented offense was committed, an offender who is sentenced for the sexually oriented offense to a prison term, a term of imprisonment, or any other type of confinement and, on or after July 1, 1997, is released in any manner from the prison term, term of imprisonment, or confinement" shall register personally with the sheriff.

{¶6} Under former R.C. Chapter 2950, the sexually-oriented-offender classification arose as a matter of law.[1] If a defendant was convicted of a sexually-oriented offense as defined in former R.C. 2950.01(D) and was not a habitual sexual offender or a sexual predator, the sexually-oriented-offender classification attached by operation of law.[2] Once an offender had been convicted of a sexually-oriented offense, he was automatically classified as a sexually-oriented offender, and he was required to comply with the registration requirements of former R.C. 2950.04 through former R.C. 2950.07.[3] No hearing was required to determine whether a defendant was a sexually-oriented offender.[4] His duty to register arose by operation of law and not by virtue of a sexual-offender-classification hearing or a court order.[5]

{¶7} Beck's classification as a sexually-oriented offender and his duty to register under former R.C. Chapter 2950 arose by operation of law upon his conviction for a sexually-oriented offense and his release from prison for that sexually-oriented offense after July 1, 1997.[6] Under former R.C. Chapter 2950, Beck had a duty to register as a sexually-oriented offender for ten years even though he

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[1] See *State v. Hayden*, 96 Ohio St.3d 211, 2002-Ohio-4169, 773 N.E.2d 502.
[2] See id.
[3] See *State v. Cooper*, 1st Dist. No. C-030921, 2004-Ohio-6428.
[4] See *State v. Hayden*, supra, at fn. 1.
[5] See *State v. Cooper*, supra, at fn. 3; *In re Hawkins*, 1st Dist. No. C-080052, 2008-Ohio-4381; *In re Abney*, 1st Dist. No. C-080053, 2008-Ohio-4379.
[6] See id.; former R.C. 2950.04(A)(1)(a).

had never registered. Therefore, the Attorney General had the authority to reclassify Beck under R.C. 2950.031(A). We hold that Senate Bill 10 can be applied to classify Beck as a Tier III offender.

{¶8} We turn now to Beck's eight assignments of error. Beck's first assignment of error, which alleges that the retroactive application of Senate Bill 10's tier-classification and registration requirements violates the constitutional ban on ex post facto laws, is overruled.

{¶9} "The Ex Post Facto Clause applies only to criminal statutes."[7] We held in *Sewell v. State*[8] that the tier-classification and registration provisions of Senate Bill 10 are remedial and not punitive, and that they do not have the effect of converting a remedial statute into a punitive one. Because Senate Bill 10's classification and registration provisions are civil and remedial, not criminal, they do not violate the constitutional ban on ex post facto laws.

{¶10} Beck's second, third, and fourth assignments of error are overruled because the retroactive application of Senate Bill 10's tier-classification and registration requirements does not violate the prohibition on retroactive laws contained in Section 28, Article II of the Ohio Constitution, the Double Jeopardy Clause of the Ohio Constitution, or the separation-of-powers doctrine.[9] Beck's arguments under the United States Constitution are also overruled on *Sewell's* reasoning.

{¶11} Beck's fifth assignment of error is overruled. Beck has no standing to challenge Senate Bill 10's residency restriction because he has not shown that he lives in or owns property within the restricted area or that he has been forced to move outside

[7] See *State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291, 700 N.E.2d 570, citing *California Dept. of Corrections v. Morales* (1995), 514 U.S. 499, 504, 115 S.Ct. 1597, and *Collins v. Youngblood* (1990), 497 U.S. 37, 43, 110 S.Ct. 2715.
[8] 181 Ohio App.3d 280, 2009-Ohio-872, 908 N.E.2d 995.
[9] Id.

the restricted area.[10] We note that the Ohio Supreme Court held in *Hyle v. Porter*[11] that because the residency restriction in former R.C. 2950.031 was not expressly made retrospective, it could not be applied to an offender who had bought his home and committed his offense before the effective date of the statute.

{¶12} Beck's sixth and seventh assignments of error, which allege that reclassifying him as a Tier III sex offender under Senate Bill 10 constituted a breach of his plea agreement and an impairment of an obligation of contract, in violation of Section 28, Article II of the Ohio Constitution and Clause I, Section 10, Article I of the United States Constitution, are overruled. The retroactive application of Senate Bill 10's tier-classification and registration requirements to a sex offender who pleaded guilty to a sexually-oriented offense pursuant to a plea bargain does not violate the Contract Clause of the Ohio and United States Constitutions, because when the offender entered his plea he had no reasonable expectation that his sex offense would never be made the subject of future legislation and no vested right concerning his registration duties.[12] Senate Bill 10's tier-classification and registration requirements are remedial, collateral consequences of the underlying criminal sex offense, and they do not affect a plea agreement previously entered between the state and the offender.[13]

{¶13} The eighth assignment of error, alleging that the retroactive application of Senate Bill 10's registration requirements constitutes cruel and unusual punishment, is overruled because the statutes are civil and remedial, not punitive.[14] Therefore, the registration requirements cannot be viewed as punishment.[15]

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[10] See *State v. Randlett*, 4th Dist. No. 08CA3046, 2009-Ohio-112; *State v. Swank*, 11th Dist. No. 2008-L-019, 2008-Ohio-6059; *State v. Duncan*, 3rd Dist. No. 7-08-03, 2008-Ohio-5830.
[11] 117 Ohio St.3d 165, 2008-Ohio-542, 882 N.E.2d 899.
[12] See *White v. State*, 1st Dist. No. C-090177, 2010-Ohio-234; *Burbrink v. State*, 1st Dist. No. C-081075, 2009-Ohio-5346.
[13] See id.
[14] See *Sewell v. State*, supra, at fn. 8.
[15] See id.; *State v. Williams*, 12th Dist. No. CA2008-02-029, 2008-Ohio-6195; *State v. Byers*, 7th Dist. No. 07 CO 39, 2008-Ohio-5051.

{¶14} The judgment of the trial court is affirmed.

Judgment affirmed.

CUNNINGHAM, P.J., and **HILDEBRANDT, J.,** concur.

Please Note:

The court has recorded its own entry this date.