

[Cite as *Nixon v. State*, 2010-Ohio-767.]

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

BRADLEY NIXON,	:	APPEAL NO. C-090219
	:	TRIAL NO. SP-0800089
Petitioner-Appellee,	:	
	:	<i>DECISION.</i>
vs.	:	
STATE OF OHIO,	:	
	:	
Respondent-Appellant.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: March 5, 2010

Ohio Justice & Policy Center, Margie Slagle, and David A. Singleton, for Petitioner-Appellee,

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

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

DINKELACKER, Judge.

{¶1} On July 27, 2001, petitioner-appellee Bradley Nixon pleaded guilty in a plea bargain to one count of gross sexual imposition in violation of R.C. 2907.05(A)(1). The court accepted Nixon’s plea, found him guilty of gross sexual imposition, and imposed five years’ community control. The sentencing entry stated that Nixon was “found to be a sexually oriented offender.” Under former R.C. Chapter 2950, Nixon was required to annually register as a sexual offender for ten years.

{¶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. Nixon was notified that he had been reclassified under Senate Bill 10 as a Tier I sex offender and that he was required to annually register with the local sheriff for 15 years.

{¶3} Nixon filed an R.C. 2950.031(E) petition to contest his reclassification, challenging the constitutionality of Senate Bill 10. After a hearing, the trial court granted Nixon’s R.C. 2950.031(E) petition. The court found that reclassifying Nixon as a Tier I 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, because his plea agreement was a contract with the state of Ohio that he would be obligated to register as a sex offender for only ten years.

{¶4} The state’s sole assignment of error alleges that the trial court erred in granting Nixon’s R.C. 2950.031(E) petition on the basis that his plea agreement constituted a contract that he would have to register as a sex offender for only ten years.

{¶5} Section 28, Article II of the Ohio Constitution and Clause I, Section 10, Article I of the United States Constitution provide that no laws shall be passed that impair the obligation of contracts. “[A]ny change in the law which impairs the rights

of either party, or amounts to a denial or obstruction of the rights accruing by contract, is repugnant to the Constitution.”¹ Because plea agreements are contracts between the state and criminal defendants, principles of contract law are applicable to their interpretation and enforcement.²

{¶6} We held in *Burbrink v. State*³ that the retroactive application of Senate Bill 10’s tier-classification and registration requirements to a sex offender who had pleaded guilty to a sexually-oriented offense pursuant to a plea bargain under former R.C. Chapter 2950 did 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. 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.⁴

{¶7} We pointed out in *Burbrink* that, under former R.C. Chapter 2950, an offender who pleaded guilty to a sexually-oriented offense was by operation of law a sexually-oriented offender who had to register annually for ten years. By not requesting a higher sexual-offender classification, the state had fulfilled its part of the plea agreement.⁵ Once the offender had pleaded guilty and had been sentenced, both he and the state had fulfilled their respective parts of the plea agreement, and no action taken after that time could have breached the plea agreement.⁶

{¶8} In *White v. State*,⁷ we held, relying on *Burbrink*, that the retroactive application of Senate Bill 10’s tier-classification and registration requirements did

¹ See *Kiser v. Coleman* (1986), 28 Ohio St.3d 259, 503 N.E.2d 753.

² See *State v. Netherland*, 4th Dist. No. 08CA3043, 2008-Ohio-7007, citing *State v. Adkins*, 161 Ohio App.3d 114, 2005-Ohio-2577, 829 N.E.2d 729; *State v. Bethel*, 110 Ohio St.3d 416, 2006-Ohio-4853, 854 N.E.2d 150; *State v. Vega*, 1st Dist. No. C-020486, 2003-Ohio-1548.

³ 1st Dist. No. C-081075, 2009-Ohio-5346.

⁴ See *id.* at ¶10.

⁵ See *id.* at ¶11.

⁶ See *id.*

⁷ 1st Dist. No. C-090177, 2010-Ohio-234.

not constitute a breach of White's plea agreement or an impairment of his right to contract where the April 19, 1999, entry withdrawing White's not-guilty plea and entering his plea of guilty to sexual battery stated that he would be classified as a sexually-oriented offender rather than a sexual predator.

{¶9} We hold in this case that pursuant to *Burbrink* and *White* the retroactive application of Senate Bill 10's tier-classification and registration requirements did not violate the Contract Clause of the Ohio and United States Constitutions because it did not impair Nixon's rights under any contract with the state of Ohio that, under his plea agreement, he would be obligated to register as a sex offender for only ten years. The application of Senate Bill 10's registration requirements did not constitute a breach of Nixon's plea agreement or an impairment of his right to contract. Therefore, the trial court erred in granting Nixon's R.C. 2950.031(E) petition. The assignment of error is sustained.

{¶10} The judgment of the trial court is reversed, and this cause is remanded for the trial court to enter an order reflecting that Senate Bill 10's tier-classification and registration requirements are applicable to Nixon as a Tier I sex offender.

Judgment reversed and cause remanded.

CUNNINGHAM, P.J., concurs.

MALLORY, J., concurs in judgment only.

MALLORY, JUDGE, concurring in judgment only.

{¶11} I agree that the judgment of the trial court must be reversed in this case, but not for the reasons expressed by the majority. I would reverse the trial court's judgment on the basis that the record does not contain sufficient evidence that Nixon's ten-year registration requirement was a term of his plea agreement. The record simply does not support the trial court's determination that there was an agreement between the state and Nixon as to his sexual-offender classification and registration requirements. Therefore, the retroactive application of Senate Bill 10's tier-classification and registration requirements does not impair any contract between Nixon and the state or violate his constitutional right to contract.

{¶12} There may be a case in which the record demonstrates that the terms of a plea agreement between the state and a sexual offender constituted a valid contract as to the offender's classification and registration requirements. I do not foreclose the possibility that in such a case the retroactive application of Senate Bill 10's tier-classification and registration requirements may be an unconstitutional impairment of contractual obligations and a violation of the offender's right to contract.

Please Note:

The court has recorded its own entry this date.