

[Cite as *State v. Williams*, 2010-Ohio-3537.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 22574
v.	:	T.C. NO. 07 CR 3300
GLENN S. WILLIAMS	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	

**OPINION**

Rendered on the 30<sup>th</sup> day of July, 2010.

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DONOVAN, P.J.

{¶ 1} This matter is before the Court on the Notice of Appeal of Glenn S. Williams, filed January 11, 2008. Williams was indicted on 10 counts of unlawful sexual conduct with a minor, felonies of the fourth degree, in violation of R.C. 2907.04(A), and in exchange for guilty pleas to two of those counts, the remaining charges were dismissed. Williams

was sentenced, on January 3, 2008, to concurrent three year terms on each count. At sentencing, the trial court designated Williams a Tier II sexual offender, pursuant to Senate Bill 10 (“S.B. 10”). Williams appeals from that designation, making several constitutional arguments. We hereby affirm the judgment of the trial court.

{¶ 2} Williams asserts one assignment of error as follows:

{¶ 3} “APPLICATION OF S.B. 10 TO CLASSIFY APPELLANT AS A TIER II OFFENDER VIOLATES THE EX POST FACTO CLAUSE OF THE UNITED STATES CONSTITUTION, THE RETROACTIVE CLAUSE OF THE OHIO CONSTITUTION, THE SEPARATION OF POWERS DOCTRINE, AND PROCEDURAL AND SUBSTANTIVE DUE PROCESS CLAUSES OF THE UNITED STATES AND OHIO CONSTITUTIONS.”

{¶ 4} “We have previously rejected these contentions in other sexual offender classification cases. See, e.g., *State v. Desbiens*, Montgomery App. No. 22489, 2008-Ohio-3375; *State v. Barker*, Montgomery App. No. 22963, 2009-Ohio-2774; [*State v. Dobson*, [Miami App. No. 2008 CA 43, 2010-Ohio-279]; and *State v. Heys*, Miami App. No. 09-CA-04, 2009-Ohio-5397.

{¶ 5} “In *Desbiens*, we held that ‘S.B. 10 sets forth a civil and non-punitive reclassification and registration scheme.’ *Id.*, at ¶ 26, citing *State v. King*, Miami App. No. 08-CA-02, 2008-Ohio-2594. We therefore rejected the petitioner’s claims that ‘S.B. 10 violates several constitutional rights, including his right to protection from ex post facto laws, his right to substantive due process, his right to contract, and his right to procedural due process.’ *Id.*, at ¶ 18.

{¶ 6} “In *Barker*, we noted that:

{¶ 7} “‘In July[,] 2008, this court held that S.B. 10 did not offend the ex post facto clause of the United States Constitution because S.B. 10 is civil and non-punitive. \* \* \* In November, 2008, we held S.B. 10 did not violate the ex post facto clause or retroactive clause of the Ohio Constitution. \* \* \* Having determined \* \* \* that S.B. 10 is civil and non-punitive, Barker’s claim that the legislation violates the cruel and unusual punishment clauses and the double jeopardy clauses of the United States and Ohio Constitution must fail as well.’ 2009-Ohio-2774, at ¶ 3 (citations omitted).

{¶ 8} “Subsequently in *Heys*, we rejected the petitioner’s contention that S.B. 10 deprived him of substantive and procedural due process rights. \* \* \*

{¶ 9} “\* \* \*

{¶ 10} “ ‘Furthermore, no liberty interest is implicated. \* \* \* “A constitutionally protected liberty interest has been defined as freedom from bodily restraint and punishment.” \* \* \* The Ohio Supreme Court held that the previous registration requirements involved no bodily restraint or punishment; they are neither criminal nor punitive in nature. \* \* \* Similarly, the S.B. 10 requirements have also been found to be non-punitive.’ 2009-Ohio-5397, at ¶ 11-12 (citations omitted).

{¶ 11} “Finally, regarding residency restrictions, we commented in *Dobson* as follows:

{¶ 12} “ ‘Heys, like *Dobson*, had further claimed that he was denied substantive due process, because his property interest is hindered by the residency requirements. We noted, initially, that an individual must actually suffer a deprivation of property rights in order to

have standing to challenge the constitutionality of the residency restriction. \* \* \* Because Dobson has not alleged, much less established, that he has been deprived of his property rights, he lacks standing to challenge the residency restrictions. However, even if Dobson had standing, we have previously rejected his assertion that the residency restrictions impose an unconstitutional restraint and infringe on a fundamental right. \* \* \*’ 2010-Ohio-279, at ¶ 15, citing *Heys*, 2009-Ohio-5397 (other citations omitted).” *State v. Dudley*, Montgomery App. No. 22931, 2010-Ohio-3240, ¶ 68-72, 74-76.

{¶ 13} Williams has not alleged or established that he has been deprived of property rights. He “therefore, lacks standing to pursue this claim. Furthermore, as noted in *Dobson*, we have rejected the contention that residency restrictions infringe upon a fundamental right.

{¶ 14} “On June 3, 2010, the Supreme Court of Ohio decided *State v. Bodyke*, ---- Ohio St.3d ----, 2010-Ohio-2424, holding that the scheme of reclassifications of sexual offenders by the Ohio Attorney General, mandated by R.C. 2950.031 and 2950.032, violates the separation of powers doctrine.” *Dudley*, at ¶ 78. As in *Dudley*, *Bodyke* has no application to Williams, who was not reclassified by the Ohio Attorney General under R.C. 2950.031 and R.C. 2950.032. Since Williams’ sentencing hearing occurred after January 1, 2008, he was originally classified by the sentencing judge.

{¶ 15} Williams’ constitutional challenges to S.B. 10 are without merit and are overruled. The judgment of the trial court is affirmed.

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BROGAN, J. and FAIN, J., concur.

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