

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-09-1135

Appellee

Trial Court No. CR0200803746

v.

Donald Frederick

DECISION AND JUDGMENT

Appellant

Decided: May 7, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Jennifer L. Donovan, Assistant Prosecuting Attorney, for appellee.

Eric Allen Marks, for appellant.

* * * * *

COSME, J.

{¶ 1} Appellant, Donald Frederick, appeals from a judgment issued by the Lucas County Court of Common Pleas following his no contest plea to attempted failure to notify in violation of R.C. 2923.02, 2950.05(F)(1) and 2950.99(A)(1)(iii). Appellant contends that Am.Sub.S.B. No. 10 (Ohio's Adam Walsh Act) violates the Ex Post Facto

Clause of the United States Constitution and the Retroactivity Clause of the Ohio Constitution. We conclude appellant's arguments are without merit and affirm the judgment of the trial court.

I. BACKGROUND

{¶ 2} In June 1989, appellant was convicted of gross sexual imposition and classified as a "sexually oriented offender," pursuant to former R.C. Chapter 2950. Upon his release from incarceration in 1998, appellant had a duty to register his address with the county sheriff's department every year, for a period of ten years.

{¶ 3} In 2007, the Ohio General Assembly passed S.B. 10, which amended R.C. Chapter 2950 by eliminating the prior sex offender classifications and substituting a three-tier classification based on the offense committed. The Ohio Attorney General reclassified appellant as a Tier I sex offender. This extended the period of appellant's registration duties by an additional five years.

{¶ 4} On November 21, 2008, the Lucas County Grand Jury indicted appellant for failing to notify the sheriff of an address change, as required by R.C. 2950.05(F)(1). Appellant moved to dismiss the indictment, contending that the retroactive application of S.B. 10 was unconstitutional. The trial court, citing precedent from this court, denied appellant's motion to dismiss on April 1, 2009. Following a no contest plea to a lesser charge of attempted failure to notify, the trial court sentenced appellant to six months incarceration on April 17, 2009. Appellant appeals the trial court's April 17, 2009 judgment, raising one assignment of error.

II. CONSTITUTIONALITY OF SENATE BILL 10

{¶ 5} In his sole assignment of error, appellant contends that:

{¶ 6} "The trial court erred in denying appellant's motion to dismiss and his objections to the application of the Adam Walsh Act in his case because the retroactive application of Senate Bill 10 violates the Ex Post Facto Clause of the United States Constitution and the Retroactivity Clause of Section 28, Article II, Ohio Constitution."

{¶ 7} Appellant concedes that this court has previously rejected similar constitutional challenges to S.B. 10. In *Montgomery v. Leffler*, 6th Dist. No. H-08-011, 2008-Ohio-6397, ¶ 22-23, this court found that provisions of S.B. 10 are remedial in nature and not substantive, and thus, do not violate the Retroactivity Clause of the Ohio Constitution. The court further held that the S.B. 10 provisions are civil and not criminal, and thus, do not violate the Ex Post Facto Clause of the United States Constitution. *Id.* We have consistently followed *Montgomery* and its progeny in subsequent decisions.¹ Accordingly, appellant's sole assignment of error is not well-taken.

¹See, e.g., *State v. Boerio*, 6th Dist. No. L-08-1182, 2009-Ohio-5181; *State v. Case*, 6th Dist. No. H-08-009, 2009-Ohio-2923; *State v. Ulmer*, 182 Ohio App.3d 96, 2009-Ohio-1737; *State v. Tuttle*, 6th Dist. No. H-08-015, 2009-Ohio-1128; *State v. Stockman*, 6th Dist. No. L-08-1077, 2009-Ohio-266; *State v. Moody*, 6th Dist. Nos. L-08-1108, L-08-1109, 2009-Ohio-47; *State v. Duncan*, 6th Dist. No. F-08-003, 2008-Ohio-6802; *State v. Marsh*, 6th Dist. No. L-09-1068, 2009-Ohio-6675; *State v. Bodyke*, 6th Dist. Nos. H-07-040, H-07-041, H-07-042, 2008-Ohio-6387, discretionary appeal accepted 121 Ohio St.3d 1438, 2009-Ohio-1638.

III. CONCLUSION

{¶ 8} We affirm the April 17, 2009 judgment of the Lucas County Court of Common Pleas. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.