

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Respondent-Appellee

-vs-

LAWRENCE HAGEDORN

Petitioner-Appellant

JUDGES:

Hon. Julie A. Edwards, P.J.

Hon. William B. Hoffman, J.

Hon. Patricia A. Delaney, J.

Case No. 2009CA00152

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Criminal Division, Case
No. 2007CV05159

JUDGMENT:

Reversed

DATE OF JUDGMENT ENTRY:

June 14, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, J.

{¶1} Petitioner-appellant Lawrence Hagedorn appeals the June 3, 2009 Judgment Entry of the Stark County Court of Common Pleas dismissing his petition challenging the application of Senate Bill 10 in this matter. Respondent-appellee is the State of Ohio.

STATEMENT OF THE CASE

{¶2} On January 6, 1997, Appellant was indicted on one count of sexual battery, a felony of the third degree. Appellant entered a plea of guilty to the charge. On April 7, 1997, Appellant was sentenced to two years of incarceration with the time suspended conditioned upon Appellant successfully completing three years of probation. The trial court ordered Appellant to serve thirty days in the Stark County Jail. Appellant stipulated to a Sexually Oriented Offender classification, and was ordered to register no later than July 15, 1997.

{¶3} Upon serving his thirty days in the Stark County Jail, Appellant was released from jail on May 7, 1997 and completed his first registration on that date. Appellant maintains he was not permitted to leave the Stark County Jail until he registered. Appellant thereafter registered prior to the July 15 date each year for ten consecutive years. Appellant ceased registration after June 29, 2007.

{¶4} Appellant received a Notice of New Classification pursuant to Senate Bill 10, Ohio's Adam Walsh Act, on December 1, 2007. Appellant then filed a petition contesting the application of Senate Bill 10 arguing the new classification violated constitutional provisions barring retroactivity and ex post facto laws; the separation of

powers doctrine; double jeopardy clauses; the right to contract; and due process. Appellant further alleged a violation of his plea agreement.

{¶15} Via Judgment Entry of June 3, 2009, citing this Court's rulings in *In re Adrian R.*, 2008-Ohio-6581 and *Sigler v. Ohio*, 2009-Ohio-2010, the trial court found Senate Bill 10 constitutional on all grounds. The court denied Appellant's request for an oral hearing on the matter as the parties agreed it was a declaratory judgment action. The trial court then dismissed Appellant's petition contesting the constitutionality of Senate Bill 10, and ordered Appellant "register pursuant to his classification under current law as an appropriate tiered offender."

{¶16} Appellant now appeals, assigning as error:

{¶17} "I. THE ADAM WALSH ACT WAS INAPPROPRIATELY APPLIED TO THE DEFENDANT/APPELLANT BECAUSE THE DEFENDANT/APPELLANT HAD PREVIOUSLY COMPLETED HIS REGISTRATION AS A SEXUALLY ORIENTED OFFENDER PRIOR TO THE ENACTMENT OF THE ADAM WALSH ACT."

{¶18} Senate Bill 10 was passed as a result of the Adam Walsh Act, reorganizing Ohio's sex offender classification and registration scheme. Instead of having three levels of offenders classified as "sexually oriented offenders," "habitual sex offenders," and "sexual predators," the new law assigns offenders to a classification based on a tier system that relies on the offense of conviction and/or the number of convictions. See R.C. 2950.01 (E, F. and G)

{¶19} Effective January 1, 2008, Tier I offenders were required to register for fifteen years and must verify their residence with the sheriff on an annual basis. R.C. 2950.05(B)(3); R.C. 2950.06(B)(1). Tier II offenders must register for twenty-five years

and periodically verify every 180 days. R.C. 2950.05(B)(2); R.C. 2950.06(B)(2). Tier III offenders must register for the rest of their life and periodically verify every 90 days. R.C. 2950.05(B)(1); R.C. 2950.06(B)(3). Adult Tier III offenders are also subject to automatic community notification, under which the sheriff is required to notify the offender's neighbors and certain other persons in the community of the offender's residence, offense, and Tier III status.

{¶10} Ohio Revised Code Section 2950.033, provides:

{¶11} “If, on or before July 1, 2007, an offender who has been convicted of or pleaded guilty to a sexually oriented offense or a child-victim oriented offense or a delinquent child in a category specified in division (C) of this section has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code based on that offense and if the offender's or delinquent child's duty to comply with those sections based on that offense is scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008, under the version of section 2950.07 of the Revised Code that is in effect prior to January 1, 2008, notwithstanding that scheduled termination of those duties, the offender's or delinquent child's duties under those sections shall not terminate as scheduled and shall remain in effect for the following period of time:***”

{¶12} Accordingly, the Act required prior offenders whose duty to register terminated after July 1, 2007, but prior to January 1, 2008 to comply with the reclassification.

{¶13} Appellant argues the Act is not applicable in his case as he commenced registration on May 7, 1997 as required by the State prior to his release from jail and he

continued to register for the next ten years. Therefore, Appellant maintains his duty to register ceased in May of 2007.

{¶14} The State responds the trial court ordered Appellant to register no later than July 15, 1997; therefore, his duty to register would not cease until July 15, 2007, thereby subjecting Appellant to the provisions of the Adam Walsh Act. The State further asserts Appellant's arguments are barred as they were not raised in the trial court.

{¶15} As set forth in the Statement of the Case above, the trial court did not conduct a hearing on this issue; rather, Appellant's petition was dismissed upon a finding of constitutionality of S.B. 10. As a result of the volume of petitions challenging the Adam Walsh Act and the attendant constitutional challenges, Appellant's counsel did not present this specific and unique challenge in his petition to the trial court. However, in the interest of justice and fairness, and based on the unique facts and limited record before this Court, we find Appellant commenced registration on May 7, 1997 upon the directive of the State of Ohio despite the trial court's order Appellant register prior to July 15, 2007. We find application of the Adam Walsh Act to Appellant constitutes plain error.

{¶16} Appellant's first assignment of error is sustained.

{¶17} The judgment of the trial court is reversed.

By: Hoffman, J.

Edwards, P.J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

