

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
WARREN COUNTY

RYAN YINGLING,	:	
Petitioner-Appellant,	:	CASE NO. CA2008-06-067
- vs -	:	<u>OPINION</u> 3/8/2010
STATE OF OHIO,	:	
Respondent-Appellee.	:	

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS  
Case No. 08CV70242

Paris Ellis, 1501 S. Breiel Blvd., Middletown, Ohio 45044, for petitioner-appellant

Rachel A. Hutzal, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, Ohio 45036, for respondent-appellee

**RINGLAND, J.**

{¶1} Petitioner-appellant, Ryan Yingling, appeals a decision of the Warren County Court of Common Pleas dismissing his petition challenging his reclassification as a Tier III Sexual Offender. For the reasons outlined below, we reverse the decision of the trial court and remand.

{¶2} In 2006, appellant was convicted of four counts of sexual battery and classified as a sexually oriented offender. In December 2007, appellant received written notice that he had been reclassified as a Tier III sex offender. Appellant filed a petition

challenging the reclassification. Following the issuance of this court's decision in *State v. Williams*, Warren App. No. CA2008-02-029, 2008-Ohio-6195, the state moved to dismiss appellant's petition. The trial court granted the motion and dismissed appellant's petition without a hearing. Appellant timely appeals, raising seven assignments of error.

For the purposes of this case, we will first address appellant's seventh assignment of error.

{¶13} Assignment of Error No. 7:

{¶14} "THE TRIAL COURT ERRED TO THE PREJUDICE OF PETITIONER-APPELLANT BY DISMISSING PETITIONER-APPELLANT'S PETITION WHICH INCLUDED A REQUEST FOR HEARING UNDER R.C. 2950.031(E) WITHOUT HOLDING THE HEARING MANDATED BY THE STATUTE."

{¶15} Appellant argues in his seventh assignment of error that the trial court erred in dismissing his petition without a hearing. In *State v. Brewer*, Butler App. No. CA2009-02-041, 2009-Ohio-3157, this court held that a sex offender reclassified under Ohio's Adam Walsh Act is entitled to a hearing upon a timely and properly filed petition pursuant to the mandate of R.C. 2950.031(E). *Id.* at ¶16. The record indicates that appellant's petition was timely and properly filed. Therefore, on the basis of *Brewer*, we find that appellant was entitled to a hearing on his petition challenging his sex offender reclassification in accordance with R.C. 2950.031(E).

{¶16} The state references two scheduling orders included in the record and that an "event" was scheduled for March 21, 2008 regarding appellant's petition. The state contends that a hearing was "most likely held in the trial court's chambers" that day.

{¶17} As a general rule, a court speaks only through its journal. *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, ¶6. No record exists that a hearing was held in chambers or otherwise. Accordingly, we are unconvinced that a hearing was held in this

matter or that due process was served. Further, pursuant to our decision in *Brewer*, a trial court is required to hold a formal hearing on the record to satisfy the R.C. 2950.031(E) hearing requirement.

{¶18} Appellant's seventh assignment of error is sustained.

{¶19} Assignment of Error No. 1:

{¶110} "THE TRIAL COURT ERRED TO THE PREJUDICE OF PETITIONER-APPELLANT WHEN IT DETERMINED THAT APPLYING THE ADAM WALSH ACT TO PETITIONER-APPELLANT DID NOT VIOLATE THE EX POST FACTO CLAUSE OF THE UNITED STATES CONSTITUTION."

{¶111} Assignment of Error No. 2:

{¶112} "THE TRIAL COURT ERRED TO THE PREJUDICE OF THE PETITIONER-APPELLANT WHEN IT DETERMINED THAT APPLYING THE ADAM WALSH ACT TO PETITIONER-APPELLANT DID NOT VIOLATE THE PROBATION ON RETROACTIVE LAWS IN ARTICLE II, SECTION 28 OF THE OHIO STATE CONSTITUTION."

{¶113} Assignment of Error No. 3:

{¶114} "THE TRIAL COURT ERRED TO THE PREJUDICE OF THE PETITIONER-APPELLANT WHEN IT DETERMINED THAT APPLYING THE ADAM WALSH ACT TO PETITIONER-APPELLANT DID NOT VIOLATE THE SEPARATION OF POWERS DOCTRINE IN THE OHIO CONSTITUTION."

{¶115} Assignment of Error No. 4:

{¶116} "THE TRIAL COURT ERRED TO THE PREJUDICE OF THE PETITIONER-APPELLANT WHEN IT HELD THAT APPLYING THE ADAM WALSH ACT TO PETITIONER-APPELLANT DID NOT VIOLATE THE DOUBLE JEOPARDY CLAUSE OF THE OHIO OR THE UNITED STATES CONSTITUTION."

{¶17} Assignment of Error No. 5:

{¶18} "THE TRIAL COURT ERRED TO THE PREJUDICE OF THE PETITIONER-APPELLANT WHEN IT HELD THAT THE APPLYING OF THE ADAM WALSH ACT TO PETITIONER-APPELLANT WHO HAD PREVIOUSLY BEEN SUBJECT TO THE 2003 VERSION OF MEGAN'S LAW DID NOT VIOLATE DUE PROCESS AND DID NOT CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT AS PROHIBITED BY THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND SECTION 9, ARTICLE I OF THE OHIO CONSTITUTION."

{¶19} Assignment of Error No. 6:

{¶20} "THE TRIAL COURT ERRED TO THE PREJUDICE OF THE PETITIONER-APPELLANT WHEN IT HELD THAT THE ADAM WALSH ACT APPLIED TO PETITIONER-APPELLANT AS HE HAD ENTERED A PLEA OF GUILTY/NO CONTEST WHICH HOLDING IMPAIRS THE OBLIGATION OF CONTRACTS AS PROHIBITED BY THE OHIO AND UNITED STATES CONSTITUTION."

{¶21} Based upon our resolution of appellant's seventh assignment of error, appellant's remaining assignments of error are moot.

{¶22} Judgment reversed and remanded.

BRESSLER, P.J., and HENDRICKSON, J., concur.