

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

SHERMAN SMALLWOOD,	:	
Plaintiff-Appellant,	:	CASE NO. CA2011-04-074
- vs -	:	<u>OPINION</u>
	:	12/5/2011
STATE OF OHIO,	:	
Defendant-Appellee.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV2011-01-0345

Sherman Smallwood, Inmate #A326976, Chillicothe Correctional Institution, P.O. Box 5500, Chillicothe, Ohio 45802, plaintiff-appellant pro se

Michael T. Gmoser, Butler County Prosecuting Attorney, Donald R. Caster, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for defendant-appellee, State of Ohio

R. Michael DeWine, 30 East Broad Street, Columbus, Ohio 43215, for Defendant, Ohio Attorney General

POWELL, P.J.

{¶1} Appellant, Sherman Smallwood, appeals the decision of the Butler County Court of Common Pleas dismissing his request for a declaration that his sex offender classification under Megan's Law was in error. We reject Smallwood's arguments and affirm the decision of the trial court.

{¶2} Smallwood's complaint for declaratory relief indicated that he was convicted in 1996, but returned to the trial court for a sexual offender registration and notification hearing in 2006, where he was classified at that time under Ohio's version of Megan's Law. Smallwood argues the trial court should apply the reasoning of recent Ohio Supreme Court cases on Ohio's version of the Adam Walsh Act to the imposition in his case of Megan's Law.

{¶3} The trial court in the instant case found his complaint should be dismissed on the basis of res judicata because Smallwood's classification under Megan's Law could have been raised on appeal of his classification hearing in 2006. The trial court also found that, even though the claim is barred by res judicata, the application of Megan's Law to Smallwood does not violate the separation-of-powers doctrine.

{¶4} In his first assignment of error, Smallwood, pro se, challenges the trial court's dismissal of his complaint.

{¶5} For purposes of this appeal, we will assume Smallwood's complaint was proper and address the merits of his assignments of error. The trial court indicated it considered additional materials attached by Smallwood to his complaint. See Civ.R. 12(B)(6). While we are not entirely comfortable with the procedure followed by the trial court, we note that no one is objecting to the consideration of those materials.

{¶6} Smallwood's complaint indicates a sexual classification hearing took place in 2006 to impose a classification under Megan's Law. Clearly, Smallwood could have raised a challenge to that classification on appeal at that time. See *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, ¶59 (res judicata bars the assertion of claims against a valid, final judgment of conviction that have been raised or could have been raised on appeal); *State v. Clayborn*, 125 Ohio St.3d 450, 2010-Ohio-2123, syllabus, ¶15-16 (time for filing offender classification judgment); see *Holmes v. Crawford Machine, Inc.*, Crawford App. Nos. 3-11-09, 3-11-10, 3-11-12, 2011-Ohio-5741, ¶44.

{¶7} Accordingly, Smallwood's challenge is barred by res judicata and his first assignment of error is overruled.

{¶8} In his second assignment of error, Smallwood contests the trial court's finding that the application of "Megan's Law" to his case did not violate the doctrine of separation of powers.

{¶9} As we previously noted, the trial court found, in the alternative, that Smallwood's classification under Megan's Law did not violate the separation-of-powers doctrine. We agree with that assessment as Megan's Law did not interfere with judicial authority in the classification procedure. See *State v. Thompson*, 92 Ohio St.3d 584, 2001-Ohio-1288 (rejecting separation of powers challenge to Megan's Law pre-S.B. 5 changes; law does not encroach on trial court's fact-finding authority); *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824 (rejecting challenges other than separation-of-powers doctrine to Megan's Law post S.B. 5 amendments); see, generally, *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, and *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374 (Adam Walsh Act).

{¶10} Smallwood's second assignment of error is overruled.

{¶11} Judgment affirmed.

RINGLAND and HENDRICKSON, JJ., concur.