

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

STATE OF OHIO	:	
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Plaintiff-Appellee	:	C.A. CASE NO. 2008 CA 41
v.	:	T.C. NO. 1996 CR 119
	:	
DANIEL L. WATKINS, II	:	(Criminal appeal from Common Pleas Court)
	:	
Defendant-Appellant	:	

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**OPINION**

Rendered on the 19<sup>th</sup> day of June, 2009.

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FROELICH, J.

{¶ 1} Daniel Watkins II appeals from a judgment of the Greene County Court of Common Pleas, which concluded that the court lacked jurisdiction to address constitutional challenges to R.C. Chapter 2950, as amended by Senate Bill 10, in a hearing pursuant to R.C. 2950.031(E) and R.C. 2950.032(E), and affirmed Watkins’s reclassification as a Tier III sex

offender. For the following reasons, the trial court's judgment will be affirmed.

{¶ 2} On May 29, 1996, Watkins pled guilty to attempted rape, in violation of R.C. 2923.02(A) & R.C. 2907.02(A)(1)(B). On September 3, 1997, Watkins was designated a sexually oriented offender, which required him to register annually with the local sheriff's office for ten years, in accordance with the registration requirements set forth in Ohio's Sex Offender Registration and Notification Act, R.C. Chapter 2950 ("SORN").

{¶ 3} In 2007, the General Assembly enacted Senate Bill 10 ("S.B. 10") to implement the federal Adam Walsh Child Protection and Safety Act of 2006. Among other changes, S.B. 10 modified the classification scheme for offenders who are subject to the Act's registration and notification requirements. S.B. 10 created a three-tiered system, in which a sex offender's classification is determined based on the offense of which the offender was convicted.

{¶ 4} On November 26, 2007, Watkins received a notice from the Ohio Attorney General informing him of recent changes to SORN and that he had been reclassified as a Tier III sex offender. As a Tier III sex offender, Watkins would be required to register with the local sheriff's office every 90 days for life, and he would be subject to community notification.

{¶ 5} On January 25, 2008, Watkins filed a petition to contest his reclassification. Watkins raised several constitutional challenges to S.B. 10, including that reclassification by the Attorney General violates the separations of powers doctrine, that the new obligations under S.B. 10 violate vested rights, that S.B. 10 is an illegal ex post facto law, and that S.B. 10 violates the principles of double jeopardy and contractual principles of a plea agreement.

{¶ 6} On January 30, 2008, the State moved to dismiss Watkins's petition, arguing that the trial court lacked jurisdiction to address constitutional challenges to S.B. 10 in a hearing on

a petition to contest reclassification. Alternatively, the State asserted that S.B. 10 was constitutional.

{¶ 7} On March 18, 2008, the trial court held a brief hearing on Watkins’s petition. A few days later, the trial court issued a judgment, concluding that “it does not have authority under the existing statute to rule on the constitutional issues raised and those issues can be raised by a declaratory judgment action or other civil action.” The court further found that Watkins had “failed to demonstrate, by clear and convincing evidence, any error in the reclassification by the Attorney General.” The court stayed the “issue of community notification.”

{¶ 8} Watkins appeals from the trial court’s judgment, raising two assignments of error, which state:

{¶ 9} I. “A COMMON PLEAS COURT MAY DETERMINE THE CONSTITUTIONALITY OF STATUTES UNLESS JURISDICTION TO DO SO IS EXPRESSLY REMOVED BY STATUTE.”

{¶ 10} II. “THE RECLASSIFICATION AND NOTIFICATION PROVISIONS OF AMENDED R.C. CHAP. 2950 ARE UNCONSTITUTIONAL UNDER BOTH THE OHIO AND UNITED STATES CONSTITUTIONS AND BEAR NO RATIONAL RELATIONSHIP TO THE GOALS OF THE STATUTORY SCHEME.”

{¶ 11} In his first assignment of error, Watkins claims that the trial court erred in determining that it lacked jurisdiction to address his constitutional arguments. We agree.

{¶ 12} R.C. 2950.031(E) provides that an offender “who is in a category described in division (A)(2) or (b) of this section may request as a matter of right a court hearing to contest

the application to the offender \*\*\* of the new registration requirements under [S.B. 10]. The offender \*\*\* may contest the manner in which the letter sent to the offender \*\*\* specifies that the new registration requirements apply to the offender \*\*\* or may contest whether those new registration requirements apply at all to the offender \*\*\*.” Whether S.B. 10 “appl[ies] at all to the offender” includes the issue of the statute’s constitutionality.

{¶ 13} More fundamentally, a trial court has an obligation not to apply unconstitutional statutes. Statutes are presumed to be constitutional, e.g., *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, at ¶12, and ““Ohio law abounds with precedent to the effect that constitutional issues should not be decided unless absolutely necessary.”” *Ohioans for Fair Representation, Inc. v. Taft* (1993), 67 Ohio St.3d 180, 183, quoting *Hall China Co. v. Pub. Util. Comm.* (1977), 50 Ohio St.2d 206, 210. However, a trial court has the authority and the responsibility to review the statute’s constitutionality, if challenged and if “absolutely necessary,” prior to applying the law.<sup>1</sup> Such was the case here. The trial court erred in concluding that it lacked the authority to determine whether S.B. 10 was constitutional. See, for example, *Mobil Oil Corp. v. Rocky River* (1974), 38 Ohio St.2d 23, 26 (stating that an administrative appeal of the application of a zoning restriction to the court of common pleas may include a constitutional challenge to the validity of the underlying ordinance, even though constitutionality was not addressed by the administrative body and the adverse decision was ministerial or non-discretionary).

{¶ 14} Although the trial court erred in concluding that it lacked jurisdiction to address

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<sup>1</sup>We note that R.C. 2721.12, which requires notice to the Attorney General when a statute is alleged to be unconstitutional, is not an issue in this case. The notification requirement in R.C. 2721.12 applies only where the constitutionality of a statute is raised in a declaratory judgment action, which this is not. *Cleveland Bar Assn. v. Picklo*, 96 Ohio St.3d 195, 2002-Ohio-3995; *State v. Mutter*, 171 Ohio App.3d 563, 2007-Ohio-1052, at ¶2.

Watkins' constitutional arguments, we find the error to be harmless. In order for the trial court to determine that S.B. 10 had been properly applied to Watkins and to uphold the Attorney General's reclassification, the trial court implicitly presumed that S.B. 10 was constitutional. Based on this Court's respect for stare decisis and our opinion in *State v. Barker*, Montgomery App. No. 22963, 2009-Ohio-2774, Watkins' constitutional arguments lack merit.

{¶ 15} The assignments of error are overruled.

{¶ 16} The judgment of the trial court will be affirmed.

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

Copies mailed to:

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Hon. J. Timothy Campbell