

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23437
v.	:	T.C. NO. 08 CV 924
SETH M. ROBINS	:	(Civil appeal from Common Pleas Court)
Defendant-Appellant	:	

OPINION

Rendered on the 18th day of June, 2010.

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DONOVAN, P.J.

{¶ 1} This matter is before the Court on the Notice of Appeal of Seth M. Robins, filed May 20, 2009. Robins appeals from the decision of the Montgomery County Court of Common Pleas that R.C. 2950.01, et seq., (hereinafter S.B. 10) is constitutional. While we

have previously determined that S.B. 10 does not violate various constitutional provisions, the Ohio Supreme Court recently held that R.C. 2950.031 and 2950.032 violate the separation-of-powers doctrine, and the Court severed those sections from the statutory scheme. *State v. Bodyke*, Slip Opinion No. 2010-Ohio-2424, ¶ 66. Those sections governed the reclassification by the attorney general of sex offenders already classified by judges under a prior version of R.C. Chapter 2950.

{¶ 2} In 2006, Robins pled guilty and was convicted of assault and sexual imposition, and he was sentenced to community control sanctions for a period not to exceed five years. He was also classified as a sexually oriented offender. The same year, Congress passed the Adam Walsh Child Protection and Safety Act (“A.W.A.”) which created national standards for sex-offender registration, community notification, and classification. In 2007, the Ohio General Assembly enacted S.B. 10 in response to the A.W.A. S.B. 10 repealed former legislation, replacing it with a retroactive scheme that includes a three-tiered system dividing sex offenders into three categories. S.B. 10 abolished the previous classifications of sexually oriented offender, habitual sex offender, and sexual predator, and it required the attorney general to reclassify offenders instead as Tier I, Tier II, or Tier III sex offenders, based upon the offender’s offense. S.B.10 required the attorney general to send official notification to offenders regarding their new tier classification and attendant duties.

{¶ 3} In November, 2007, Robins, pursuant to S.B. 10, received a “Notice of New Classification and Registration Duties” from the Office of Marc Dann, the Ohio Attorney General. Robins was reclassified as a Tier I sex offender, and among other duties, he was

required to register with the local sheriff's office once a year for 15 years.

{¶ 4} On January 25, 2008, Robins filed a "Petition to Contest Application of the Adam Walsh Act," requesting an oral hearing. Robins asserted, inter alia, that the "legislative and executive branches' attempt to reclassify Petitioner under SB10 violates the separation of powers doctrine by interfering with a prior judicial adjudication regarding Petitioner's sex offender status." Robins also filed a "Motion for Preliminary Injunction Staying Enforcement of Senate Bill 10 Until Further Order of this Court," and a "Complaint for Declaratory Judgment." The State filed "Respondent's Partial Motion to Dismiss Pursuant to Ohio Civil Rule 12," to which Robins responded. On May 8, 2009, the trial court issued a "Decision and Entry Regarding Constitutionality of S.B.10," overruling Robins' motions without a hearing and concluding in part that "S.B. 10 does not violate the separation of powers doctrine." The court relied upon its previous decisions in *State v. Barker*, Montgomery C.P. No. 91-CR-504, and *State v. Hoke*, Montgomery C.P. No. 91-CR-2354, filed on August 29, 2008.

{¶ 5} Robins asserts six assignments of error. His first assignment of error is as follows:

{¶ 6} "THE TRIAL COURT ERRED IN FINDING THAT S.B. 10 DOES NOT VIOLATE THE CONSTITUTIONAL DOCTRINE OF SEPARATION OF POWERS BY ALLOWING THE OHIO LEGISLATURE TO OVERRULE A COURT'S FINAL JUDGMENT."

{¶ 7} "A statute violating 'the doctrine of separation of powers is unconstitutional.' *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, * * *

1999-Ohio-123. ‘The separation-of-powers doctrine implicitly arises from our tripartite democratic form of government and recognizes that the executive, legislative, and judicial branches of our government have their own unique powers and duties that are separate and apart from the others.’ (Citations omitted). The doctrine’s purpose ‘is to create a system of checks and balances so that each branch maintains its integrity and independence.’” (Citations omitted). *State v. Barker*, Montgomery App. No. 22963, 2009-Ohio-2774, ¶ 5.

{¶ 8} According to *Bodyke*, “Our Constitution and case law make undeniably clear that the judicial power resides exclusively in the judicial branch. (Citation omitted). The judicial power of the state is vested exclusively in the courts. (Citation omitted). The power to review and affirm, modify, or reverse other court’s judgments is strictly limited to appellate courts. (Citation omitted). The AWA intrudes on that exclusive role and thus violates the separation-of-powers doctrine.

{¶ 9} “Moreover, once the final judgment has been opened, the AWA requires that the attorney general ‘shall determine’ the new classifications of offenders * * * who were classified by judges under the former statutes. R.C. 2950.031(A)(1); 2950.032(A)(1)(a) and (b). In doing so, it violates a second prohibition by assigning to the executive branch the authority to revisit a judicial determination.

{¶ 10} “Thus, we conclude that R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders who have already been classified by court order under former law, impermissibly instruct the executive branch to review past decisions of the judicial branch and thereby violate the separation-of-powers doctrine.

{¶ 11} “We further conclude that R.C. 2950.031 and 2950.032, which require the

attorney general to reclassify sex offenders whose classifications have already been adjudicated by a court and made the subject of a final order, violate the separation-of-powers doctrine by requiring the opening of final judgments.” *Id.*, at ¶ 58- 61.

{¶ 12} The Supreme Court concluded that “severance of R.C. 2950.031 and 2950.032, the reclassification provisions in the AWA, is the proper remedy. By excising the unconstitutional component, we do not ‘detract from the overriding objectives of the General Assembly,’ i.e., to better protect the public from the recidivism of sex offenders, and the remainder of the AWA, ‘which is capable of being read and of standing alone, is left in place.’ (Citation omitted). We therefore hold that R.C. 2950.031 and 2950.032 are severed and, that after severance, they may not be enforced. R.C. 2950.031 and 2950.032 may not be applied to offenders previously adjudicated by judges * * * , and the classifications and community-notification and registration orders imposed previously by judges are reinstated.” *Id.*, at ¶ 66.

{¶ 13} Pursuant to *Bodyke*, Robins’ first assignment of error is sustained, and the judgment of the trial court that S.B.10 does not violate the separation-of-powers doctrine is reversed.

{¶ 14} We will address Robins’ remaining constitutional challenges together. For purposes of convenience, we will designate these challenges collectively as follows:

{¶ 15} “S.B. 10 VIOLATES VARIOUS CONSTITUTIONAL PROVISIONS.”

{¶ 16} Robins contends that the reclassification requirements in S.B. 10 violate the Ex Post Facto Clause of the Federal and State Constitution; the Retroactivity Clause of the Ohio Constitution; the Double Jeopardy Clause of the of the State and Federal Constitutions;

and the constitutional protections against impairment of contracts and cruel and unusual punishment. He also argues that the residency requirements in S.B. 10 violate the substantive due process protections in the State and Federal Constitutions. We note that these arguments also were raised in *Bodyke*, but the Supreme Court did not address them.

{¶ 17} *Bodyke's* holding that Robins' reclassification pursuant to R.C. 2950.031 and 2950.032 is unconstitutional renders moot Robins' remaining arguments addressed to his reclassification. Since R.C. 2950.031 and 2950.032 have been excised in the statutory scheme, Robins' previous classification as a sexually oriented offender is reinstated.

Judgment reversed.

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BROGAN, J. and GRADY, J., concur.

Copies mailed to:

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