

COURT OF APPEALS
COSHOCTON COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
	:	Hon. W. Scott Gwin, J.
Plaintiff-Appellee	:	Hon. Julie A. Edwards, J.
	:	
-vs-	:	
	:	Case No. 2008-CA-23
SCOTT HUGHES	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal appeal from the Coshocton County Court of Common Pleas, Case Nos. 08-CI-0070 & 01-CR-118

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: May 20, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Gwin, J.,

{¶1} Defendant-appellant Scott Hughes, appeals from the trial court's denial of the petition contesting his reclassification as a Tier I sex offender under R.C. 2950.01, et seq., as amended by S.B.10, also known as the "Adam Walsh Act" a law which was in effect on the date the trial court re-classified appellant, but which was not in effect on the date he committed the sexual offense in question. Appellant now challenges the constitutionality of Ohio's Senate Bill 10, effective January 1, 2008, which eliminated the prior sex offender classifications and substituted a three-tier classification system based on the offense committed. Appellant maintains that R.C. Chapter 2950, as amended by S.B. 10, violates the federal and Ohio constitutional prohibitions against ex post facto or retroactive laws, the doctrine of separation of powers and amounts to double jeopardy. Briefly, the relevant facts of this case are as follows.

{¶2} Appellant was convicted of two counts of Importuning, pursuant to R.C. 2907.07(A), in Coshocton County Common Pleas Court case 01 CR 118, on April 3, 2002. As a result of appellant's conviction, appellant was classified as a sexually oriented offender and ordered to adhere to the reporting requirements set forth for that classification.

{¶3} On or about December 1, 2007, appellant received a "Notice of New Classification and Registration Duties," based on Ohio's Adam Walsh Act, from the Office of the Attorney General.

{¶4} On January 25, 2008, appellant timely filed a Petition to Contest Application of the Adam Walsh Act with the Court of Common Pleas pursuant to R.C. 2950.031(E)

and 2950.032(E), challenging the application of the Act itself. Appellee filed a Memorandum in Opposition and Motion to Dismiss on January 31, 2008.

{¶5} On August 26, 2008, the court heard arguments on the Petition. By Judgment Entry on September 12, 2008, the court denied the relief requested in appellant's Petition, and granted appellee's Motion to Dismiss.

{¶6} It is from the trial court's September 12, 2008 Judgment Entry that appellant now appeals, raising the following four assignments of error:

{¶7} "I. THE COURT ERRED IN DENYING APPELLANT'S PETITION IN THAT THE ADAM WALSH ACT AS RETROACTIVELY APPLIED IS AN IMPERMISSIBLE *EX POST FACTO* LAW.

{¶8} "II. THE COURT ERRED IN DENYING APPELLANT'S PETITION AS APPLICATION OF OHIO'S AWA IN HIS CASE IS A RETROACTIVE LAW.

{¶9} "III. THE COURT ERRED IN DENYING APPELLANT'S PETITION IN THAT HIS RECLASSIFICATION VIOLATES THE SEPARATION OF POWERS DOCTRINE.

{¶10} "IV. THE COURT ERRED IN DENYING APPELLANT'S PETITION IN THAT APPLICATION OF THE AWA IN HIS CASE REPRESENTED A DOUBLE JEOPARDY VIOLATION."

I & II.

{¶11} In his first two assignments of error appellant maintains that his classification as a tier two sex offender pursuant to the Adam Walsh Act violates the prohibitions against ex post facto and retroactive laws that impair vested, substantive rights provided in the United States and Ohio Constitutions.

{¶12} This court has examined identical arguments and has rejected them. *State v. Gooding*, 5th Dist. No. 08 CA 5, 2008-Ohio-5954 at ¶37; See also, *Sigler v. State*, Richland App. No. 08-CA-79, 2009-Ohio-___. Virtually every Appellate District in the State has upheld the AWA against the identical challenges raised by appellant. See, *State v. Graves*, 179 Ohio App.3d 107, 2008-Ohio-5763; *Holcomb v. State*, Third Dist. Nos. 8-08-23, 8-08-25, 8-08-26, 8-08-24, 2009-Ohio-782; *State v. Bodyke*, 6th Dist. Nos. H-07-040, H07-041, H07-042, 2008-Ohio-6387; *State v. Byers*, 7th Dist. No. 07CO39, 2008-Ohio-5051; *State v. Ellis*, 8th Dist. No. 90844, 2008-Ohio-6283; *State v. Honey*, 9th Dist. No. 08CA0018-M, 2008-Ohio-4943; *State v. Christian*, 10th Dist. No. 08AP-170, 2008-Ohio-6304; *State v. Swank*, 11th Dist. No. 2008-L-019, 2008-Ohio-6059; *State v. Williams*, 12th Dist. No. CA2008-02-029, 2008-Ohio-6195.

{¶13} Upon thorough review of appellant's arguments, we shall follow the law set forth in our decisions in *Gooding* and *Sigler*. On the authority of the foregoing decisions, appellant's first and second assignments of error are overruled.

III. & IV.

{¶14} In his third assignment of error, appellant maintains that the legislative enactment of Senate Bill 10 unconstitutionally infringes on the power of the judiciary by stripping it of the right to determine the classification of sexual offenders. In his fourth assignment of error, appellant argues that Senate Bill 10 violates the Double Jeopardy Clause contained in the Fifth Amendment of the United States Constitution and in Section 10, Article I of the Ohio Constitution. Specifically, appellant argues that because Senate Bill 10 is punitive in its intent and effect, the registration and community

notification provisions of the statute unconstitutionally inflict a second punishment upon a sex offender for a singular offense.

{¶15} In *State ex rel. Bray v. Russell* (2000), 89 Ohio St.3d 132, 729 N.E.2d 359 the Ohio Supreme Court explained the doctrine of separation of powers: “[t]his court has repeatedly affirmed that the doctrine of separation of powers is ‘implicitly embedded in the entire framework of those sections of the Ohio Constitution that define the substance and scope of powers granted to the three branches of state government’s. *Euclid v. Jemison* (1986), 28 Ohio St.3d 157, 158-159, 28 OBR 250, 251, 503 N.E.2d 136, 138; *State v. Warner* (1990), 55 Ohio St.3d 31, 43-44, 564 N.E.2d 18, 31. See *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451, 475, 715 N.E.2d 1062, 1085; *State v. Hochhausler* (1996), 76 Ohio St.3d 455, 463, 668 N.E.2d 457, 465-466. See also, *State v. Firouzmandi*, 5th Dist. No. 2006-CA-41, 2006-Ohio-5823 at ¶46.

{¶16} “The essential principle underlying the policy of the division of powers of government into three departments is that powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments, and further that none of them ought to possess directly or indirectly an overruling influence over the others.’ *State ex rel. Bryant v. Akron Metro. Park Dist.* (1929), 120 Ohio St. 464, 473, 166 N.E. 407, 410. See, also, *Knapp v. Thomas* (1883), 39 Ohio St. 377, 391-392; *State ex rel. Finley v. Pfeiffer* (1955), 163 Ohio St. 149, 56 O.O. 190, 126 N.E.2d 57, paragraph one of the syllabus.” *Id.* at 134, 729 N.E.2d 361.

{¶17} In our constitutional scheme, the judicial power resides in the judicial branch. Section 1, Article IV of the Ohio Constitution. The determination of guilt in a

criminal matter and the sentencing of a defendant convicted of a crime are solely the province of the judiciary. See *State ex rel. Atty. Gen. v. Peters* (1885), 43 Ohio St. 629, 648, 4 N.E. 81, 86. See, also, *Stanton v. Tax Comm.* (1926), 114 Ohio St. 658, 672, 151 N.E. 760, 764 (“the primary functions of the judiciary are to declare what the law is and to determine the rights of parties conformably thereto”); *Fairview v. Giffie* (1905), 73 Ohio St. 183, 190, 76 N.E. 865, 867 (“It is indisputable that it is a judicial function to hear and determine a controversy between adverse parties, to ascertain the facts, and, applying the law to the facts, to render a final judgment.”).

{¶18} The classification of sex offenders, however, is a creature and mandate of the legislature that does not implicate the inherent power of the courts. *State v. Bodyke*, 6th Dist. Nos. H-07-040, H-07-041, H-07-042, 2008-Ohio-6387, at ¶ 22. For this reason, several courts of appeals, including this court, have concluded that the Adam Walsh Act does not violate the separation of powers doctrine. See: *In re: Smith*, 3d Dist. No. 01-07-58, 2008-Ohio-3234, at ¶ 39; *State v. Messer*, 4th Dist. No. 08CA3050, 2009-Ohio-312, at ¶ 23-26; *In re: A.R.*, 5th Dist. No. 08-CA-17, 2008-Ohio-6581, at ¶ 34; *State v. Byers*, 7th Dist. No. 07CO39, 2008-Ohio-5051, at ¶ 73-74; *State v. Reinhardt*, 9th Dist. 08CA0012-M, 2009-Ohio-1297 at ¶29 *State v. Williams*, 12th Dist. No. CA2008-02-029, 2008-Ohio-6195, at ¶ 99-102; This Court agrees with the rationale offered by these other districts and concludes that the Adam Walsh Act does not violate the separation of powers doctrine.

{¶19} Appellant's final argument under the second assignment of error asserts that Ohio's Adam Walsh Act constitutes a second punishment in violation of the Double

Jeopardy Clause of the United States Constitution and a similar provision in the Ohio Constitution

{¶20} Ohio's Adam Walsh Act is not a criminal, punitive statutory scheme and does not constitute punishment for purposes of the double jeopardy clauses. *Sewell v. State*, 1st Dist. No. C-080503, 2009-Ohio-872, at ¶ 16-27; *State v. Byers*, 7th Dist. No. 07 CA 39, 2008-Ohio-5051, at ¶ 100-103; *Brooks v. State*, 9th Dist. NO., 2008CA009452, 2009-Ohio-1825 at ¶21-25 ; *State v. Reinhardt*, 9th Dist. 08CA0012-M, 2009-Ohio-1297 at 28; *State v. Williams*, 12th Dist. No. CA2008-02-029, 2008-Ohio-6195 at ¶ 107-111.

{¶21} This Court agrees with the rationale offered by these other districts and concludes that the Adam Walsh Act does not violate the Double Jeopardy Clause of the United States Constitution or the Ohio Constitution.

{¶22} Appellant's third and fourth assignments of error are overruled.

{¶23} The judgment of the Coshocton County Court of Common Pleas is affirmed.

By Gwin, J.,

Farmer, P.J., and

Edwards, J., concur

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. JULIE A. EDWARDS

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