[Cite as *Smith v. State*, 2009-Ohio-3633.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DORRIEN SMITH	JUDGES:
Petitioner-Appellee	Hon. W. Scott Gwin, P.J. Hon. William B. Hoffman, J. Hon. Julie A. Edwards, J.
-vs-	
	Case No. 08-CA-112
STATE OF OHIO	
Respondent-Appellant	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Richland County Court of Common Pleas, Case No. 08-CV-1684D
JUDGMENT:	Reversed and Remanded
DATE OF JUDGMENT ENTRY:	July 22, 2009

APPEARANCES:

For Respondent-Appellant State of Ohio	For Petitioner-Appellee

FRANK ARDIS, JR.
Assistant Prosecuting Attorney
Richland County Prosecutor's Office
38 South Park
Mansfield, Ohio 44902

KIRSTEN PSCHOLKA-GARTNER
Assistant Prosecuting Attorney
Richland County Prosecutor’s Office
38 South Park
Mansfield, Ohio 44902

Hoffman, J.

{¶1} Respondent-appellant State of Ohio appeals a judgment of the Richland County Court of Common Pleas, which found Senate Bill 10, Ohio's Adam Walsh Act, to be unconstitutional. Petitioner-appellee is Dorrien Smith.

STATEMENT OF THE CASE[1]

{¶2} On March 6, 2004, Appellee was convicted of unlawful sexual conduct with a minor in Wayne County, Ohio. On March 28, 2008, while incarcerated, Appellee received notice effective January 1, 2008, he would be reclassified for purposes of sex offender registration as a Tier II offender pursuant to Senate Bill 10, Ohio's Adam Walsh Act, which became effective July 1, 2007. On September 2, 2008, Appellee filed a Petition to Contest Reclassification in the Richland County Court of Common Pleas as he was serving his sentence in the Mansfield Correctional Institution.

{¶3} Based upon *Sigler v. State of Ohio,* Richland County Court of Common Pleas Case No. 07CV1863, the trial court found Ohio's Adam Walsh Act to be an unconstitutional violation of the ex post facto clause and the prohibition on retroactive laws. The trial court further found application of the Act to Appellee was barred because he had previously been sentenced and classified under the law in existence at the time of his original sentence.

{¶4} The State assigns the following as error:

{¶5} "I. WHETHER, BEYOND A REASONABKE [SIC] DOUBT, SENATE BILL 10 AND THE CONSTITUTIONAL PROVISIONS CITED BY THE TRIAL COURT ARE

[1] A Statement of the Facts underlying Appellee's convictions is not necessary to our disposition of this appeal.

CLEARLY INCOMPATIBLE, AND WHETHER THERE IS NO SET OF CIRCUMSTANCES UNDER WHICH THE SENATE BILL 10 WOULD BE VALID. THE TRIAL COURT PURPORTED TO INVALIDATE THE LEGISLATION, RATHER THAN THE STATUTORY PROVISIONS ACTUALLY AT ISSUE IN THIS MATTER. HENCE, BY INVALIDATING THE 'ADAM WALSH ACT,' THE COURT APPARENTLY PURPORTED TO INVALIDATE EVERY STATUE [SIC] AMENDED BY THE SB 10, DESPITE THE NARROW CLAIM BEFORE IT. THE COURT BELOW DID NOT PROPERLY APPLY, OR SUBSTANTIATE DIVERGENCE FROM, THE PRESUMPTION OF CONSTITUTIONALITY.

{¶6} "II. WHETHER SENATE BILL 10'S LEGISLATIVE ADJUSTMENT TO THE FREQUENCY AND DURATION OF APPELLE'S [SIC] PRE-EXISTING DUTY TO REGISTER RENDERED THE STATUTE UNCONSTITUTIONALLY RETROACTIVE. STATUTE FOUND TO BE RETROACTIVE IS ONLY UNCONSTITUTIONAL IF IT SIGNIFICANTLY BURDENS A VESTED SUBSTANTIVE RIGHT, BUT NOT IF IT IS REMEDIAL. AS THE OHIO SUPREME COURT HAS CONSISTENTLY HELD UNDER THE STATUTORY FRAMEWORK AMENDED BY THE SENATE BILL 10, THAT FRAMEWORK IS REMEDIAL IN NATURE. THE GENERAL ASSEMBLY EXPRESSED ITS INTENT THAT R.C. CHAPTER 2950, AS AMENDED, REMAIN REMEDIAL IN NATURE.

{¶7} "III. WHETHER, SENATE BILL 10'S ADJUSTMENT TO THE FREQUENCY AND DURATION OF APPELLEE'S PRE-EXISTING DUTY TO REGISTER CONSTITUTED SUCCESSIVE PUNISHMENT IN VIOLATION OF THE EX POST FACTO CLAUSE. IT WAS, INSTEAD A REMEDIAL, CIVIL STATUTE THAT DID

NOT IMPACT OFFENDERS' SENTENSES [SIC] FOR THE CRIMES THEY COMMITTED.

{¶8} "IV. WHETHER A PLEA AGREEMENT BETWEEN A OFFENDER AND THE PROSECUTING ATTORNEY CREATED A VESTED, SETTLED EXPECTATION THAT THE OFFENDER'S CLASSIFICATION WOULD NEVER CHANGE. THE CLASSIFICATIONS OF SB 10, AND THE PRIOR CLASSIFICATIONS IMPOSED PURSUANT TO STATUTE BY THE COURT, DO NOT, AND DID NOT, CREATE THE EXPECTATION THAT CONVICTED SEX OFFENDERS WOULD NEVER AGAIN BE THE SUBJECT OF LEGISLATIVE ACTION."

STANDARD OF REVIEW

{¶9} This case comes to us on the accelerated calendar. App. R. 11.1, which governs accelerated calendar cases, provides, in pertinent part:

{¶10} "(E) Determination and judgment on appeal. The appeal will be determined as provided by App. R. 11. 1. It shall be sufficient compliance with App. R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusionary form. The decision may be by judgment entry in which case it will not be published in any form."

{¶11} One of the important purposes of accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on the regular calendar where the briefs, facts and legal issues are more complicated. *Crawford v. Eastland Shopping Mall Assn.* (1983), 11 Ohio App.3d 158.

{¶12} This appeal shall be considered in accordance with the aforementioned rules.

I, II & III

{¶13} In its first, second, and third assignments of error, the State contends the trial court erred in finding Senate Bill 10 to be unconstitutional on multiple grounds. We agree.

{¶14} This Court has examined the identical arguments which the trial court accepted in finding Senate Bill 10 unconstitutional; we have rejected those arguments. *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-2010; *State v. Perkins*, Coshocton App. No. 08-CA-0020, 2009-Ohio-2404; *State v. Hughes*, Coshocton App. No. 2008-CA-23, 2009-Ohio-2406. Virtually every Appellate District in the State has upheld the Adam Walsh Act against the identical challenges the trial court relied upon to find Senate Bill 10 unconstitutional. 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.

{¶15} Upon thorough review of the State's arguments, we shall follow the law set forth in our decisions in *Gooding,* supra, and *Sigler,* supra. On the authority of the foregoing decisions, the State's first, second and third assignments of error are well taken.

IV.

{¶16} In its fourth assignment of error, the State argues the trial court erred by finding Senate Bill 10 to be unconstitutional on the basis that it violates the right to contract pursuant to Article II, Section 28 of the Ohio Constitution. We agree.

{¶17} This Court has examined the identical argument the trial court relied upon to find Senate Bill 10 unconstitutional and has rejected it. *Sigler v. State*, supra at ¶ 88. Upon thorough review of the State's arguments, we shall follow the law set forth in our decision in S*igler.* On the authority of the foregoing decisions, the State's fourth assignment of error is well taken.

{¶18} For the foregoing reasons, we find the State's arguments to be meritorious and sustain all four assignments of error. Senate Bill 10 is constitutional and, as courts across Ohio have repeatedly held, does not violate prohibitions against retroactive or ex post facto laws.

{¶19} The judgment of the Richland County Court of Common Pleas is reversed.

By: Hoffman, J.

Gwin, P.J. and

Edwards, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin
HON. W. SCOTT GWIN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DORRIEN SMITH	:	
	:	
Petitioner-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
STATE OF OHIO	:	
	:	
Respondent-Appellant	:	Case No. 08-CA-112

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Richland County Court of Common Pleas is reversed and the case remanded to that court for further proceedings in accordance with our opinion and the law. Costs to Appellee.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin
HON. W. SCOTT GWIN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS