

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ROBERT MORENO	:	JUDGES:
	:	Sheila G. Farmer, P.J.
	:	W. Scott Gwin, J.
Petitioner-Appellee	:	Julie A. Edwards, J.
	:	
-vs-	:	Case No. 2008 CA 287
	:	
STATE OF OHIO	:	<u>OPINION</u>
	:	
Respondent-Appellant	:	

CHARACTER OF PROCEEDING: Civil Appeal from Richland County Court of Common Pleas Case No. 2008 CV 1863

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: August 6, 2009

APPEARANCES:

For Petitioner-Appellee

For Respondent-Appellant

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Edwards, J.

{¶1} Respondent-appellant, the State of Ohio, appeals from the October 16, 2008, Conditional Final Order of the Richland County Court of Common Pleas finding Senate Bill 10, Ohio's sexual offender classification and registration scheme, to be unconstitutional in its entirety. Petitioner-appellee is Robert Moreno.

STATEMENT OF FACTS AND CASE

{¶2} As memorialized in a Judgment Entry filed on May 14, 2004, in the Franklin County Court of Common Pleas, appellee Robert Moreno pleaded guilty to four counts of rape in violation of R.C. 2907.02, felonies of the first degree, and was sentenced to an aggregate sentence of five years in prison. Appellee also was adjudicated a sexually oriented offender.

{¶3} On October 7, 2008, appellee, who is incarcerated in Richland County, filed a Petition to Contest Application of the Adam Walsh Act pursuant to R.C. 2950.031(E) and 2950.032(E). The Act became effective July 1, 2007. Appellee, in his petition, alleged that he never received notice of new classification and registration duties until he went to the Richland County Sheriff's Office to register following his release from prison and that his reclassification was improper and unconstitutional. Appellant, on October 14, 2008, filed a Memorandum in Opposition and Motion to Dismiss Petition to Contest Reclassification Under the Adam Walsh Act.

{¶4} The trial court, in a Conditional Final Order filed on October 16, 2008, found that, based on *Sigler v. State of Ohio*, Case Number 07 CV 1863, in which the trial court had found the Adam Walsh Act to be an unconstitutional violation of the ex post facto clause and the prohibition on retroactive laws, application of the Act to

appellee was barred because he had been previously sentenced and classified under the law in existence when he was sentenced.

{¶5} The state now assigns four errors on appeal:

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

{¶7} “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. A 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.

{¶8} “III. WHETHER SENATE BILL 10’S LEGISLATIVE 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’ SENTENCES [SIC] FOR THE CRIMES THEY COMMITTED.

{¶9} “IV. WHETHER A PLEA AGREEMENT BETWEEN AN OFFENDER AND THE PROSECUTING ATTORNEY CREATED A VESTED, SETTLED EXPECTATION THAT THE OFFENDER’S CLASSIFICATION WOULD NEVER CHANGE. THE CLASSIFICATIONS OF SB 10, AND 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.”

I, II, III, IV

{¶10} The assignments of error raised by appellant are identical to those raised by the State of Ohio in *Sigler v. Ohio*, Richland App. No. 08-CA-79, 2009-Ohio-2010. In *Sigler*, we sustained all four assignments of error, finding that the trial court erred in finding the Adam Walsh Act facially unconstitutional, and erred in finding the Act is unconstitutionally retroactive and violates the ex post facto clause. We further found that the changes in the registration law did not impinge upon an offender’s right to contract by way of a plea agreement.

{¶11} For the reasons stated in *Sigler*, supra, we sustain all four of appellant's assignments of error.

{¶12} The judgment of the Richland County Court of Common Pleas is reversed and this matter is remanded to the trial court for further proceedings.

By: Edwards, J.
Farmer, P.J. and
Gwin, J. concur

JUDGES

JAE/d0804

[Cite as *Moreno v. State*, 2009-Ohio-3996.]

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

ROBERT MORENO	:	
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Petitioner-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
STATE OF OHIO	:	
	:	
Respondent-Appellant	:	CASE NO. 2008 CA 287

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Richland County Court of Common Pleas is reversed, and this matter is remanded to the trial court for further proceedings. Costs assessed to appellee.

JUDGES