

[Cite as *State v. Donofrio*, 2010-Ohio-340.]

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JOSEPH DONOFRIO

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 2009CA00176

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,  
Case No. 2007CV05161

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

February 1, 2010

APPEARANCES:

For Plaintiff-Appellee

JOHN D. FERRERO  
Stark County Prosecutor

By: ROSS RHODES  
Assistant Prosecuting Attorney  
110 Central Plaza South  
Suite 510  
Canton, OH 44702

For Defendant-Appellant

WAYNE E. GRAHAM, JR.  
Suite 300, Renaissance Centre  
4580 Stephen Circle, NW  
Canton, OH 44718

*Farmer, J.*

{¶1} On or about November 26, 2007, appellant, Joseph Donofrio, received a Notice of New Classification and Registration Duties, based on Ohio's Adam Walsh Act, regarding his sex offender status. The notice indicated that appellant was being classified as a Tier III sex offender.

{¶2} On December 18, 2007, appellant filed a Petition to Contest Application of the Adam Walsh Act with the Court of Common Pleas of Stark County, Ohio pursuant to R.C. 2950.031(E) and 2950.032(E), challenging the application of the Adam Walsh Act. Appellant contested his reclassification as a Tier III sex offender under R.C. 2950.01, et seq., as amended by S.B. No. 10, effective date January 1, 2008, a law which was in effect on the date the trial court reclassified appellant, but was not in effect on the date he committed the sexual offense in question. Appellant challenged the constitutionality of S.B. No. 10 which eliminated the prior sex offender classifications and substituted a three-tier classification system based on the offense committed. Appellant argued R.C. Chapter 2950, as amended by S.B. No. 10, violated the prohibition against ex post facto laws and retroactive laws, interfered with his right to contract because it required the state to breach his plea agreement, violated the separation of powers doctrine, constituted a double jeopardy violation, and violated his due process rights.

{¶3} By judgment entry filed June 3, 2009, the trial court found S.B. No. 10 was constitutional both facially and as applied to appellant.

{¶4} Appellant filed an appeal and this matter is now before his court for consideration. Assignment of error is as follows:

I

{¶5} "APPELLANT WAS DEPRIVED OF A FULL AND FAIR HEARING ON WHETHER HE WAS PROVIDED AN OPPORTUNITY TO SHOW THAT HIS RECLASSIFICATION VIOLATED THE TERMS AND CONDITIONS OF HIS PLEA BARGAIN."

I

{¶6} Appellant claims the trial court erred in finding S.B. No. 10 constitutional on its face and as applied to appellant. Appellant also claims he was denied a full and fair hearing on the issue. We disagree.

{¶7} This court has examined identical arguments as set forth by appellant and has rejected them. See, *State v. Gooding*, Coshocton App. No. 08CA5, 2008-Ohio-5954; *In re Adrian R.*, Licking App. No. 08-CA-17, 2008-Ohio-6581; See also, *Sigler v. State*, Richland App. No. 08CA79, 2009-Ohio-2010. Virtually every appellate district in this state has upheld the Adam Walsh Act against the identical challenges raised by appellant herein. See, *State v. Graves*, 179 Ohio App.3d 107, 2008-Ohio-5763; *Holcomb v. State*, 3rd 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; and *State v. Williams*, 12th Dist. No. CA2008-02-029, 2008-Ohio-6195.

{¶8} Upon thorough review of the arguments in this case, we shall follow the law as set forth in our decisions in *Gooding, Adrian*, and *Sigler*, supra.

{¶9} As for appellant's argument regarding the trial court's failure to hold a full and fair hearing on his specific plea agreement, there is no evidence of anything that appellant could have shown concerning the terms and conditions of his plea agreement that could have affected the application of S.B. No. 10 in his case:

{¶10} "Irregardless, after a guilty plea, an offender has 'no reasonable right to expect that [his] conduct will never thereafter be made the subject of legislation.' *Cook*, 83 Ohio St.3d at 412, 700 N.E.2d 570. Nor does he have any 'vested right in having the law remain the same over time.' *City of East Liverpool*, supra, 114 Ohio St.3d 133, 2007-Ohio-3758, 870 N.E.2d 705, at ¶33. Accordingly, there could not be any realistic expectation on the part of a convicted felon that the General Assembly could not, during his lifetime, alter its treatment of felons." *Sigler*, at ¶81.

{¶11} The sole assignment of error is denied.

{¶12} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby affirmed.

By Farmer, J.

Hoffman, P.J. and

Wise, J. concur.

s/ Sheila G. Farmer

s/ William B. Hoffman

s/ John W. Wise

JUDGES

SGF/sg 0121

