

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

JARED DUANE BREWER, :
 :
 Petitioner-Appellant, : CASE NO. CA2009-02-041
 :
 - vs - : OPINION
 : 6/29/2009
 :
 STATE OF OHIO, :
 :
 Respondent-Appellee. :

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV2008-08-3483

Robin N. Piper, Butler County Prosecuting Attorney, Daniel G. Eichel, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45012-0515; for respondent-appellee

Jeffrey A. Witt, 119 E. Court Street, Cincinnati, Ohio 45249, for petitioner-appellant

HENDRICKSON, J.

{¶1} Petitioner-appellant, Jared Brewer, appeals a decision of the Butler County Court of Common Pleas dismissing his petition for removal of sex offender registration requirements without a hearing. For the reasons outlined below, we reverse the decision of the trial court and remand.

{¶2} In June 2008, appellant received written notice from the Ohio Attorney General informing him that he had been reclassified as a Tier III sex offender with the corresponding lifetime registration requirement. In August 2008, appellant filed a

"petition for removal of registration requirements." Appellant's petition requested that the trial court find the new registration requirements inapplicable to him and asked the court to hold a hearing on the matter in accordance with R.C. 2950.031(E). The state subsequently moved for dismissal of appellant's petition. In an entry dated January 12, 2009, the trial court summarily dismissed the petition without a hearing, citing this court's decision in *State v. Williams*, Warren App. No. CA2008-02-029, 2008-Ohio-6195 (upholding Senate Bill 10's amendments to R.C. Chapter 2950 on numerous constitutional grounds). Appellant timely appeals, raising a single assignment of error.

{¶3} Assignment of Error No. 1:

{¶4} "THE TRIAL COURT ERRED BY DISMISSING APPELLANT'S PETITION FOR A HEARING UNDER R.C. 2950.031(E) WITHOUT HOLDING THE HEARING MANDATED BY THAT STATUTE."

{¶5} First, it would be beneficial to review the applicable law. The letter received by appellant was sent as a result of the passage of Ohio Senate Bill 10, a law implementing the federal Adam Walsh Child Protection and Safety Act. Senate Bill 10 became effective on January 1, 2008. The law classifies convicted sex offenders subject to registration under a new three-tiered system, based solely upon their offense. In addition, Senate Bill 10 provides for reclassification of all offenders who were classified prior to its enactment. *In re Smith*, Allen App. No. 1-07-58, 2008-Ohio-3234, ¶32. As with new classifications, Senate Bill 10 provides that reclassifications are based solely upon the crime for which the offender was convicted.

{¶6} We now turn to the instant appeal. In his sole assignment of error, appellant asserts that the trial court was required to hold a hearing under R.C. 2950.031(E) upon his timely request. We agree.

{¶7} In pertinent part, R.C. 2950.031(E) provides the following:

{¶8} "An offender * * * may request as a matter of right a court hearing to contest the application to the offender * * * of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008. The offender * * * may contest the manner in which the letter sent to the offender * * * specifies that the new registration requirements apply to the offender * * * or may contest whether those new registration requirements apply at all to the offender * * *."

{¶9} The statute goes on to state that, in order to request a hearing, the offender shall file a petition with the appropriate court within 60 days of the offender's receipt of notice of reclassification from the Attorney General. *Id.* Once the petition is timely filed with the appropriate court, the offender must serve a copy of the petition on the county prosecutor. Thereafter, according to the statute, "[t]he court shall schedule a hearing, and shall provide notice to the offender * * * and prosecutor of the date, time, and place of the hearing." *Id.*

{¶10} We think it clear from a reading of R.C. 2950.031(E) that the plain language of the statute mandates a hearing upon a timely and properly filed petition under that section. Contrary to the state's position, the statute does not require that the petitioner state a factual basis detailing why his classification was inappropriate. Rather, the statute permits the petitioner to address, at a hearing, the manner in which the new registration requirements were applied to him or whether the new registration requirements should be applied to him at all. Appellant's petition tracked the language of R.C. 2950.031(E), stating his "request[] that the Court find that these new registration requirements imposed on him by the Ohio Attorney General do not apply to him." To impose the requirement that the petitioner must further specify the grounds upon which relief is sought would be to interject an additional requirement not imposed by the

legislature in drafting R.C. 2950.031(E).

{¶11} We find the instant matter similar to cases in which an applicant seeking relief from statutory disability to possess a firearm is denied relief without a hearing. The Sixth Appellate District addressed such a case in *State v. Jomaa* (Nov. 30, 1990), Lucas App. No. L-90-026, 1990 WL 187240. In *Jomaa*, the appellate court examined the language of R.C. 2923.14(D), which provides that "[u]pon hearing, the court may grant the applicant relief pursuant to this section, if all of the following [three factors] apply[.]" This language, according to the Sixth District, meant that a trial court was required to hold a hearing when an applicant filed a motion seeking relief from disability. *Id.* at *1. The appellate court emphasized the due process implications inherent in its ruling, stating: "At that hearing, an opportunity for both sides to present evidence must be afforded relevant to the factors enunciated in the statute. Due process so dictates!" *Id.*

{¶12} The *Jomaa* decision was cited with approval by the Eighth Appellate District in *Smith v. State* (Apr. 21, 1994), Cuyahoga App. No. 65101, and by this court in *In re Hensley*, Warren App. No. CA2003-01-004, 2003-Ohio-4619. *Hensley* also involved an applicant seeking relief from statutory disability to possess a firearm. The trial court held a limited hearing on the application at which it gave both parties the opportunity to brief constitutional issues raised by the application. After considering the memoranda submitted by the parties, the trial court denied the application for relief.

{¶13} On appeal, citing *Jomaa* and *Smith*, this court construed R.C. 2923.14(D) as mandating a hearing on any application for relief from disability imposed by R.C. 2923.13(A)(2) or (3). *Hensley* at ¶41. Although the trial court held a limited hearing on the matter, this court remanded the case so that the trial court could hold "the type of hearing envisioned by the courts in *Smith* and *Jomaa*, i.e., a hearing at which both sides

are given an opportunity to present evidence relevant to the criteria listed in R.C. 2923.14(D)(1) through (3)." *Hensley* at ¶42.

{¶14} We note that the language in R.C. 2950.031(E) lends even more support for providing a hearing upon a proper petition than the language in R.C. 2923.14(D). As stated, R.C. 2950.031(E) provides that upon a timely and properly filed petition, "[t]he court shall schedule a hearing, and shall provide notice to the offender * * * and prosecutor of the date, time, and place of the hearing." *Id.* Unlike the single reference to a hearing found in R.C. 2923.14(D), R.C. 2950.031(E) makes multiple references to a hearing, including the text quoted above as well as in other portions of this section. In addition, R.C. 2950.031(E) specifies the following:

{¶15} "If an offender * * * requests a hearing in accordance with this division, at the hearing, all parties are entitled to be heard, and the court shall consider all relevant information and testimony presented relative to the application to the offender * * * of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008."

{¶16} Construing the plain language of the statute, we hold that R.C. 2950.031(E) mandates a hearing upon a timely and properly filed petition. In order to comport with due process, the type of hearing contemplated by the statute must be one at which both parties are given the opportunity to present evidence, in accordance with R.C. 2950.031(E), relevant to the propriety of the manner in which the new registration requirements have been applied to the offender or whether the new registration requirements should be applied to the offender at all. Such a hearing provides the sole avenue of relief for sexual offenders who, like appellant in this case, have been reclassified following the enactment of Senate Bill 10.

{¶17} We note that this court has already ruled upon a number of constitutional

challenges regarding R.C. Chapter 2950 registration requirements in our decision in *Williams*, 2008-Ohio-6195. Nonetheless, this does not permit trial courts to ignore the mandates of R.C. 2950.031(E) by refusing to hold a hearing upon timely request with the appropriate court. At that hearing, the court must afford both sides the opportunity to present relevant evidence.

{¶18} Appellant's sole assignment of error is sustained.

{¶19} The judgment of the trial court is reversed and this matter is remanded for further proceedings according to law and consistent with this opinion.

{¶20} Reversed and remanded.

POWELL, P.J., and YOUNG, J., concur.