

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

STATE OF OHIO,	:	
Respondent-Appellee,	:	CASE NO. CA2009-03-070
- vs -	:	<u>OPINION</u> 11/16/2009
STEVEN COX,	:	
Petitioner-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR98-11-1396

Robin N. Piper, Butler County Prosecuting Attorney, Gloria J. Sigman, Government Services Center, 315 High Street, 11th Fl., Hamilton, Ohio 45011, for respondent-appellee

Clayton G. Napier, 29 North "D" Street, Hamilton, Ohio 45013, for petitioner-appellant

BRESSLER, P.J.

{¶1} Petitioner-appellant, Steven Cox, appeals from the decision of the Butler County Court of Common Pleas dismissing his petition challenging his sex offender reclassification without a hearing. For the reasons outlined below, we reverse the decision of the trial court and remand.

{¶2} On November 26, 2007, appellant received written notice from the Ohio Attorney General informing him that he had been reclassified from a sexually-oriented offender to a Tier III sex offender with the corresponding lifetime registration

requirement. On December 14, 2007, appellant filed a petition challenging his reclassification and requesting a hearing. The state moved to dismiss appellant's petition, which the trial court summarily dismissed without first conducting a hearing. Appellant now appeals, raising five assignments of error.

{¶3} For ease of discussion, appellant's assignments of error will be addressed out of order, and his third, fourth, and fifth assignments of error will be addressed together.

{¶4} Assignment of Error No. 2:

{¶5} "O.R.C. 2950.11 REQUIRES A HEARING TO ESTABLISH REPORTING REQUIREMENTS."

{¶6} In his second assignment of error, appellant argues that the trial court erred in dismissing his petition without first conducting a hearing. As this court has previously held, and pursuant to R.C. 2950.031(E), a sex offender reclassified under Ohio's Adam Walsh Act is entitled to a hearing upon a timely and properly filed petition. *Brewer v. State*, Butler App. No. CA2009-02-041, 2009-Ohio-3157, ¶16; *Southerland v. State*, Butler App. No. CA2009-02-040, 2009-Ohio-5070, ¶5. The record indicates that appellant's petition was timely and properly filed. Therefore, on the basis of *Brewer* and *Southerland*, we find that appellant was entitled to a hearing on his petition challenging his sex offender reclassification. Accordingly, appellant's second assignment of error is sustained.

{¶7} Assignment of Error No. 1:

{¶8} "O.R.C. 2990.11 (ADAM WALSH ACT SB10) DOES NOT PERMIT A RECLASSIFICATION OF APPELLANT WHERE HE HAS ALREADY BEEN CLASSIFIED."

{¶9} In his first assignment of error, appellant argues that he cannot be subject

to reclassification under Senate Bill 10. However, Senate Bill 10, also known as Ohio's Adam Walsh Act, provides for reclassification of all offenders who were classified prior to its enactment. *Brewer* at ¶5, citing *In re Smith*, Allen App. No. 1-07-58, 2008-Ohio-3234, ¶32. Therefore, appellant's first assignment of error is overruled.

{¶10} Assignment of Error No. 3:

{¶11} "THIS RECLASSIFICATION VIOLATES THE SEPARATION OF POWERS DOCTRINES OF THE OHIO AND UNITED STATES CONSTITUTIONS."

{¶12} Assignment of Error No. 4:

{¶13} "RETROACTIVE APPLICATION OF SENATE BILL 10 VIOLATES THE PROHIBITION AGAINST EX POST FACT LAWS CONTAINED IN ARTICLE 1 SECTION 10 OF THE UNITED STATES CONSTITUTION AND THE PROHIBITION OF RETROACTIVE LAWS IN ARTICLE 2 SECTION 28 OF THE OHIO CONSTITUTION."

[sic]

{¶14} Assignment of Error No. 5:

{¶15} "RECLASSIFICATION OF APPELLANT CONSTITUTES MULTIPLE PUNISHMENTS BANNED BY THE DOUBLE JEOPARDY CLAUSE OF THE OHIO AND UNITED STATES CONSTITUTIONS."

{¶16} Appellant's remaining assignments of error, all challenging the constitutionality of Ohio's Adam Walsh Act, are overruled on the basis of this court's decision in *State v. Williams*, Warren App. No. CA2008-02-029, 2008-Ohio-6195, which upheld the Act on numerous constitutional grounds. See, also, *Southerland* at ¶9; *Sears v. State*, Clermont App. No. CA2008-07-068, 2009-Ohio-3541; *Ritchie v. State*, Clermont App. No. CA2008-07-073, 2009-Ohio-1841; *Searles v. State*, Warren App. No. CA2009-05-055, 2009-Ohio-4666; *McKinney v. State*, Warren App. No. CA2009-04-041, 2009-Ohio-4685.

{¶17} In light of the foregoing, the trial court's order dismissing appellant's petition is reversed and this matter is remanded so that the trial court can conduct a hearing on appellant's petition in accordance with R.C. 2950.031(E).

{¶18} Judgment reversed and remanded.

YOUNG, J., concurs.

RINGLAND, J., concurs in part and dissents in part.

RINGLAND, J., concurring in part and dissenting in part.

{¶19} I respectfully dissent to the majority's decision in the third assignment of error based upon my analysis in *Sears v. State*, Clermont App. No. CA2008-07-068, 2009-Ohio-3541, finding that the retroactive modification of judicially-determined sex offender classifications by the Adam Walsh Act violates the separation of powers doctrine. I concur to the resolution of the remaining assignments of error.