

[Cite as *McKinney v. State*, 2009-Ohio-4685.]

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

KENNETH RAY MCKINNEY,	:	
Appellant-Petitioner,	:	CASE NO. CA2009-04-041
- vs -	:	<u>OPINION</u>
	:	9/8/2009
STATE OF OHIO,	:	
Appellee-Respondent.	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS  
Case No. 08-MS-0077

Timothy R. Evans, 29 North D Street, Hamilton, OH 45013, for appellant-petitioner

Rachel A. Hutzel, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, OH 45036, for appellee-respondent

Jeffrey Clark, Assistant Attorney General, 30 East Broad Street, 16th Floor, Columbus, OH 43215, for appellee-respondent

**YOUNG, J.**

{¶1} Petitioner-appellant, Kenneth Ray McKinney, appeals the decision of the Warren County Court of Common Pleas dismissing a petition contesting his sex offender reclassification. We affirm the trial court's decision.

{¶2} On May 19, 2008, appellant received a letter from the Ohio Attorney

General informing him that he had been reclassified as a Tier III sex offender as a result of the Ohio General Assembly's passage of Senate Bill 10, Ohio's Sex Offender Registration and Notification Act, also known as Ohio's Adam Walsh Act.<sup>1</sup> On July 8, 2008, appellant filed a petition contesting his reclassification, as well as a complaint for declaratory judgment, arguing that his reclassification under Ohio's Adam Walsh Act was unconstitutional. On March 18, 2009, the trial court dismissed appellant's petition by finding Ohio's Adam Walsh Act constitutional.

{¶3} Appellant now appeals the trial court's decision to dismiss his petition, raising one assignment of error.

{¶4} "THE COURT ERRED IN FINDING THAT SENATE BILL 10, IN ITS APPLICATION TO APPELLANT, IS UNCONSTITUTIONAL."

{¶5} In his sole assignment of error, appellant argues that Ohio's Adam Walsh Act violates the Ex Post Facto Clause of the United States Constitution, the Double Jeopardy Clause of the United States and Ohio Constitutions, the Retroactivity Clause of the Ohio Constitution, as well as the separation of powers doctrine. This court has previously held that the law in Ohio's Adam Walsh Act does not violate the Ex Post Facto Clause of the United States Constitution, the Double Jeopardy Clause of the United States and Ohio Constitutions, or the Ohio Constitution's prohibition against

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1. {¶a} As the trial court found, "[i]t is unknown from the [p]etition what [appellant's] original conviction and classification was, but [only that] he received notice from the Ohio Attorney General of new classification and registration duties under Tier III." In fact, after reviewing the record, the only evidence regarding appellant's original conviction or classification is found in the Ohio Attorney General's "Motion to Dismiss and Reservation of Right to be Heard" filed with the trial court on August 7, 2008, which states:

{¶b} "On or around September 25, 1985, [appellant] was convicted of three counts of Rape, in violation of Ohio Revised Code 2907.02."

{¶c} Regardless, on appeal, appellant does not argue that his classification as a Tier III sexual offender was in error, but instead, merely challenges the constitutionality of Ohio's Adam Walsh Act.

retroactive laws. See *State v. Williams*, Warren App. No. CA2008-02-029, 2008-Ohio-6195, ¶36, ¶75, ¶107-111; *State v. Bell*, Clermont App. No. CA2008-05-044, 2008-Ohio-2335, ¶104; *State v. Sears*, Clermont App. No. CA2008-07-068, 2009-Ohio-3451, ¶7; *Ritchie v. State*, Clermont App. No. CA2008-07-073, 2009-Ohio-1841, ¶16. See, also, *Burchett v. State*, Richland App. No. 2009-CA0135, 2009-Ohio-4240, ¶25. Likewise, this court has held that Ohio's Adam Walsh Act does not violate the separation of powers doctrine of the United States or Ohio Constitutions. *Williams* at ¶99, ¶101; *Sears* at ¶10-13. Accordingly, appellant's lone assignment of error lacks merit and is overruled.

{¶6} Judgment affirmed.

POWELL, J., concurs.

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

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

{¶7} I respectfully dissent 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 with the majority's resolution of the remaining issues.