

[Cite as *State v. Dobson*, 2010-Ohio-279.]

IN THE COURT OF APPEALS FOR MIAMI COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2008 CA 43
v.	:	T.C. NO. 071038
DONN D. DOBSON	:	(Civil appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	

OPINION

Rendered on the 29th day of January, 2010.

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DONN D. DOBSON, 405 Coach Drive, Tipp City, Ohio 45371
Defendant-Appellant

FROELICH, J.

{¶ 1} Donn D. Dobson appeals from a judgment of the Miami County Court of Common Pleas, which overruled his constitutional challenges to R.C. Chapter 2950, as amended by Senate Bill 10, and dismissed his petition to contest his reclassification under that statute. For the following reasons, the trial court's

judgment will be affirmed.

{¶ 2} In March 2003, Dobson pled guilty to rape, in violation of R.C. 2907.02, and domestic violence. Dobson was sentenced to five years for the rape and eleven months for the domestic violence, to be served concurrently. Dobson was designated a sexual predator. Dobson states that his sex offender status was subsequently changed to sexually oriented offender, and the State agrees that Dobson “was registered as a sexually oriented offender, and was required to register annually ***.”

{¶ 3} In 2007, the General Assembly enacted Senate Bill 10 (“S.B.10”) to implement the federal Adam Walsh Child Protection and Safety Act of 2006. Among other changes, S.B. 10 modified the classification scheme for offenders who are subject to the Act’s registration and notification requirements. S.B. 10 created a three-tiered system, in which a sex offender’s classification is determined based on the offense of which the offender was convicted.

{¶ 4} In accordance with S.B. 10, Dobson received a notice from the Ohio Attorney General, informing him of recent changes to SORN and that he had been reclassified as a Tier III sex offender. As a Tier III sex offender, Dobson is required to register with the local sheriff’s office every 90 days for life and is subject to community notification.

{¶ 5} On December 28, 2007, Dobson filed a petition to contest his reclassification under S.B. 10. An amended petition was filed in March 2008. In his petition, Dobson claimed that S.B. 10 violated the Ex Post Facto Clause, the Retroactivity Clause, and the prohibition against double jeopardy, and that

application of S.B. 10 was barred by res judicata. Dobson requested a hearing in accordance with R.C. 2950.031(E) and R.C. 2950.032(E).

{¶ 6} The trial court held a hearing on Dobson's petition. (The record does not include a transcript of that hearing.) On December 3, 2008, the trial court overruled Dobson's objections to his reclassification and dismissed the petition, concluding that "reclassification was correct" and that his "constitutional challenges are without merit."

{¶ 7} Dobson appeals from the trial court's dismissal of his petition. Although his March 19, 2009, appellant's brief does not set forth an assignment of error, he claims that the trial court erred in denying his constitutional challenges to S.B. 10 and applying S.B. 10 to him. Specifically, he asserts that S.B. 10 repealed SORN, and he raises several constitutional challenges to S.B. 10, including that retroactive application of S.B. 10 violates the prohibitions on ex post facto laws and retroactive laws and constitutes a violation of the separation of powers doctrine. Dobson further argues that retroactive application of S.B. 10 violates procedural due process by extending the registration and notification requirements of previously-classified offenders without any additional justification, and that the residency restrictions violate substantive due process rights. Finally, Dobson claims that reclassification constitutes impermissible multiple punishments under the Double Jeopardy Clause. None of Dobson's arguments has merit.

{¶ 8} Initially, Dobson claims that Ohio's prior sex offender laws were repealed by Section 2 of S.B. 10, and that S.B. 10 was not in effect between July 1, 2007, and January 1, 2008. He states: "If the sex offender laws were repealed

during this time period, Plaintiff [Dobson] cannot be subjected to the registration and reporting requirements of either Megan's Law or the AWA."

{¶ 9} R.C. 2950.032, which became effective on July 1, 2007, required the Attorney General to determine the sex-offender tier for each defendant serving a prison term in a state correctional institution for a sexually-oriented offense. The new classification was based on changes that were to be implemented to R.C. Chapter 2950 on January 1, 2008. Even assuming, purely *arguendo*, that certain portions of Ohio's sex offender laws were repealed between July 2007 and January 1, 2008, Dobson became subject to the provisions of S.B. 10 effective January 1, 2008.

{¶ 10} Turning to Dobson's constitutional challenges, we have previously addressed and rejected each of his arguments. In *State v. Desbiens*, Montgomery App. No. 22489, 2008-Ohio-3375, we held that S.B. 10 does not offend the Ex Post Facto Clause of the United States Constitution, because S.B. 10 is civil and non-punitive and the Ex Post Facto Clause applies only to criminal statutes. *Id.* at ¶30. We reiterated that holding in *State v. Moore*, Greene App. No. 07CA093, 2008-Ohio-6238, and further held that S.B. 10 does not violate the Retroactivity Clause of the Ohio Constitution. *Id.* at ¶28. Because S.B. 10 is civil and non-punitive, it likewise does not violate the Double Jeopardy Clause. *State v. Heys*, Miami App. No. 09-CA-04, 2009-Ohio-5397, ¶17.

{¶ 11} In *State v. Barker*, Montgomery App. No. 22963, 2009-Ohio-2774, the defendant claimed that the legislature violated the separation of powers doctrine when it enacted S.B. 10 by unilaterally changing the sexual classification she

received in 1997 under previous legislation. Barker argued that the trial court made a judicial determination when she was classified a sexually oriented offender in 1997, and that the State, by applying the provisions of S.B. 10, unilaterally changed that result to a Tier III sex offender, with harsher registration and notification requirements. We rejected Barker's argument, reasoning, in part:

{¶ 12} “*** [T]he new Tier classifications under S.B. 10 operate as a matter of law, not by judicial determination. S.B. 10 abolished the former classifications of sexually oriented offenders, habitual sex offenders, or sexual predators. A legal designation of a ‘sexual predator,’ which previously required a hearing, no longer exists. See, e.g., *State v. Williams*, Warren App. No. 2008-02-029, 2008-Ohio-6195, ¶ 15. Rather, sex offenders are now classified within Tiers based solely on the offense of their conviction. *Id.*, ¶16, quoting *State v. Clay*, 177 Ohio App.3d 78, 893 N.E.2d 909, 2008-Ohio-2980.

{¶ 13} “S.B. 10 also provides for the reclassification of all offenders who were classified and still had duties under the former law when S.B. 10 came into effect. The act of reclassifying sex offenders does not encompass a judicial determination, but it is determined solely upon the offense for which the offender was convicted. Nor does it disturb a prior judicial determination. For example, a sex offender who received a sexual predator hearing where the judge judicially determined that there was a likelihood of recidivism and that the offender would have to register every 90 days for life was automatically reclassified to a Tier III offender, which contains the same registration requirements as before.”

{¶ 14} We addressed Dobson's procedural and substantive due process

arguments in *Heys*. There, Heys argued that the new requirements of S.B. 10 denied him procedural due process because he has a vested right, or liberty interest, in his original classification and registration requirements and, therefore, he was entitled to notice and the opportunity to be heard prior to the reclassification and attendant requirements taking effect. We rejected his argument, stating: “Heys has no vested interest or settled expectation in his previous classification and requirements because ‘a convicted felon has no reasonable expectation that his or her criminal conduct will not be subject to further legislation,’ including the registration requirements of R.C. Chapter 2950.” *Id.* at ¶11. We further noted that no liberty interest was implicated, because S.B. 10 was non-punitive in nature. *Id.* at ¶12.

{¶ 15} Heys, like Dobson, had further claimed that he was denied substantive due process, because his property interest is hindered by the residency requirements. We noted, initially, that an individual must actually suffer a deprivation of property rights in order to have standing to challenge the constitutionality of the residency restriction. *Id.* at ¶14; *State v. Hall*, Montgomery App. No. 22969, 2009-Ohio-3020, ¶16-17. Because Dobson has not alleged, much less established, that he has been deprived of his property rights, he lacks standing to challenge the residency restrictions. However, even if Dobson had standing, we have previously rejected his assertion that the residency restrictions impose an unconstitutional restraint and infringe on a fundamental right. *State v. King*, Miami App. No. 08-CA-02, 2008-Ohio-2594, ¶16; *Hall* at ¶20-22.

{¶ 16} Dobson’s challenges to the trial court’s ruling are overruled.

{¶ 17} The judgment of the trial court will be affirmed.

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BROGAN, J. and FAIN, J., concur.

Copies mailed to:

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Hon. Jeffrey M. Welbaum