

COURT OF APPEALS
COSHOCTON COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	W. Scott Gwin, J.
	:	Julie A. Edwards, J.
-vs-	:	
	:	Case No. 08 CA 0022
CHARLES GALLAGHER	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Criminal Appeal From Coshocton County Court Of Common Pleas Case No. 94 CR 0082 and 08 CI 0073

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: May 22, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

JASON W. GIVEN
Assistant Prosecutor
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JEFFREY A. MULLEN
Public Defender
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Edwards, J.

{¶1} Appellant, Charles Gallagher, appeals a judgment of the Coshocton County Common Pleas Court dismissing his petition to contest the application of the Adam Walsh Act (AWA). Appellee is the state of Ohio.

STATEMENT OF FACTS AND CASE

{¶2} In 1995, appellant was convicted of unlawful sexual conduct with a minor (R.C. 2907.04) upon a plea of guilty in the Coshocton County Common Pleas Court. Appellant was adjudicated to be a sexually oriented offender on July 27, 1999, and registers with the sheriff of Coshocton County.

{¶3} In December, 2007, appellant received a notice of new classification and registration duties from the Ohio Attorney General based on Ohio's AWA. Appellant was reclassified as a Tier II offender. On January 25, 2008, he filed a petition in the Common Pleas Court to contest application of the act pursuant to R.C. 2950.031(E) & 2950.032(E). On September 12, 2008, the court granted appellee's motion to dismiss the petition.

{¶4} Appellant assigns the following errors on appeal:

{¶5} "I. THE COURT ERRED IN DENYING APPELLANT'S PETITION IN THAT THE ADAM WALSH ACT AS RETROACTIVELY APPLIED IS AN IMPERMISSIBLE *EX POST FACTO* LAW

{¶6} "II. THE COURT ERRED IN DENYING APPELLANT'S PETITION AS APPLICATION OF OHIO'S AWA IN HIS CASE IS A RETROACTIVE LAW.

{¶7} “III. THE COURT ERRED IN DENYING APPELLANT’S PETITION IN THAT HIS RECLASSIFICATION VIOLATES THE SEPARATION OF POWERS DOCTRINE.

{¶8} “IV. THE COURT ERRED IN DENYING APPELLANT’S PETITION IN THAT APPLICATION OF THE AWA IN HIS CASE REPRESENTED A DOUBLE JEOPARDY VIOLATION.”

I, II

{¶9} In his first assignment of error, appellant argues that the AWA as retroactively applied is an impermissible ex post facto law. In his second assignment of error, appellant argues that the AWA is unconstitutional in violation of the retroactivity clause.

{¶10} This Court has held that the Act is not an impermissible ex post facto law, nor is the Act unconstitutionally retroactive. *Sigler v. State of Ohio*, Richland App. No. 08-CA-79, 2009-Ohio-2010. For the reasons stated in *Sigler*, appellant’s first and second assignments of error are overruled.

III, IV

{¶11} In his third and fourth assignments of error, appellant argues that the AWA violates the separation of powers doctrine and double jeopardy.

{¶12} This Court has previously held that the Act does not violate separation of powers. *In re Adrian R.*, Licking App. No. 08-CA-17, 2008-Ohio-6581, ¶34. We also held in *In re Adrian R.* that the AWA does not violate the Double Jeopardy Clause because the law is remedial in nature and not punitive. *Id.* at ¶ 32-33.

{¶13} Appellant's third and fourth assignments of error are overruled on the authority of *In re Adrian R.*, supra.

{¶14} The judgment of the Coshocton County Common Pleas Court is affirmed.

By: Edwards, J.
Farmer, P.J. and
Gwin, J. concur

JUDGES

JAE/r0430

