

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

SHERMAN SMALLWOOD,	:	
Plaintiff-Appellant,	:	CASE NO. CA2009-02-057
- vs -	:	<u>OPINION</u>
	:	7/27/2009
STATE OF OHIO,	:	
Defendant-Appellee.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV2008-01-0170

Sherman Smallwood, #A326976, Chillicothe Correctional Institution, P.O. Box 5500, 15802 State Route 104 North, Chillicothe, Ohio 45601, plaintiff-appellant, pro se

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

HENDRICKSON, J.

{¶1} Defendant-appellant, Sherman Smallwood, appeals a decision of the Butler County Court of Common Pleas dismissing a petition contesting his sex offender reclassification. For the reasons outlined below, we affirm the decision of the trial court.

{¶2} In December 1995, appellant was convicted of gross sexual imposition in violation of R.C. 2907.05, felonious sexual penetration in violation of R.C. 2907.12, and rape in violation of R.C. 2907.02. Appellant was initially adjudicated a sexually-oriented offender

in July 2006, with the concomitant duty to register with the county sheriff annually for ten years. In January 2008, following the passage of Ohio's Adam Walsh Act, appellant was reclassified as a Tier III sex offender.¹ As a result of this change, appellant would be required to register with the county sheriff every 90 days for life.

{¶3} Shortly after receiving notice of his reclassification, appellant filed a pro se "petition to contest reclassification." In a decision rendered on January 20, 2009, the trial court dismissed appellant's petition, citing this court's recent decision in *State v. Williams*, Warren App. No. CA2008-02-029, 2008-Ohio-6195 (upholding Ohio's Adam Walsh Act on numerous constitutional grounds). This appeal followed.

{¶4} In a single assignment of error, appellant argues that Ohio's Adam Walsh Act violates the Double Jeopardy, Due Process, and Retroactivity Clauses of the Ohio Constitution as well as the separation of powers doctrine. This court disposed of these arguments in *State v. Williams*, 2008-Ohio-6195, in which we determined that Ohio's Adam Walsh Act does not violate, inter alia, the Double Jeopardy and Retroactivity Clauses of the Ohio Constitution or the separation of powers doctrine. *Id.* at ¶¶107-11, ¶¶22-36, and ¶¶95-102. In addition, Ohio's Adam Walsh Act does not violate appellant's due process rights. *Id.* at ¶¶ 49, 60, 66, 72, 74. Consequently, appellant's sole assignment of error lacks merit and is overruled.

{¶5} Judgment affirmed.

POWELL, P.J., concurs.

1. Ohio Senate Bill 10 was enacted in July 2007 to implement the federal Adam Walsh Child Safety and Protection Act. The law amended R.C. Chapter 2950, Ohio's Sex Offender Registration and Notification Act (SORN Act). Pursuant to these amendments, convicted sex offenders subject to registration are classified under a new three-tiered system, based solely on their offense. Senate Bill 10 also provides for reclassification of all offenders who were initially classified prior to its enactment. As with new classifications, reclassifications are based solely on the crime for which the offender was convicted. We shall use the phrase "Ohio's Adam Walsh Act" when referring to the version of the SORN Act at issue in this case.

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

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

{¶6} 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.

[Cite as *Smallwood v. State*, 2009-Ohio-3682.]