

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

| | | |
|-----------------------|---|------------------------------|
| JAMES M. WILSON, | : | |
| Petitioner-Appellant, | : | CASE NO. CA2009-07-096 |
| - vs - | : | <u>OPINION</u> 12/21/2009 |
| STATE OF OHIO, | : | |
| Respondent-Appellee. | : | |

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 07CV70126

Margie Slagle, 215 East Ninth Street, Suite 601, Cincinnati, Ohio 45202, for petitioner-appellant

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

HENDRICKSON, J.

{¶1} Petitioner-appellant, James M. Wilson, appeals a decision of the Warren 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 March 1989, appellant was convicted of one count of rape and three counts of gross sexual imposition. Appellant was initially adjudicated a sexually-oriented offender in August 2000, with the corresponding 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.

{¶13} After receiving notice of his reclassification, appellant filed a pro se petition requesting that the trial court find the new registration requirements inapplicable to him and asking the court to hold a hearing. The state moved to dismiss appellant's petition. Following a hearing, the trial court granted the dismissal in a decision rendered on June 19, 2009. This appeal followed.

{¶14} Assignment of Error No. 1:

{¶15} "THE TRIAL COURT ERRED BY DISMISSING MR. WILSON'S PETITION WITHOUT AFFORDING HIM A HEARING AS REQUIRED BY R.C. 2950.031(E)."

{¶16} R.C. 2950.031(E) provides that an offender who is reclassified under Ohio's Adam Walsh Act may request a hearing to contest (1) the manner in which the new registration requirements apply to the offender, or (2) whether those new registration requirements apply to the offender at all. We ruled that the plain language of this statute "mandates a hearing upon a timely and properly filed petition under that section." *Brewer v. State*, Butler App. No. CA2009-02-041, 2009-Ohio-3157, ¶10. Although appellant requested a hearing in his timely and properly filed petition, he maintains that he was denied this request in contravention of R.C. 2950.031(E). The record speaks to the contrary.

{¶17} Following the filing of appellant's petition, the trial court put on an entry

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

notifying the parties that the case was "scheduled for a hearing on petition to contest reclassification * * * on Wednesday, March 26, 2008 at 2:30 PM." This notification thus reflected that the subject matter of the hearing was to be appellant's motion challenging his sex offender reclassification.

{¶18} The March 26, 2008 hearing on appellant's petition was held as scheduled. The court opened by referencing appellant's petition challenging his reclassification to a Tier III sex offender. Appellant was given the opportunity to explain the bases for his petition. He stated that his original classification required him to register once a year for ten years and did not entail community notification. Appellant explained that he felt a Tier III classification was a threat to him, his wife, and his home. He noted that he attended many programs during his confinement in prison, including a relapse prevention plan about high risk situations. He emphasized that he worked on himself very hard, and felt he had accomplished a lot and changed his behavior. Appellant also relayed a story that demonstrated his new skills. His daughter, who was the victim of his crimes, needed a place to stay and asked if she could live with him again. As he was taught, appellant sought the advice of the sheriff's department, which advised against the arrangement. Finally, appellant informed the court that he had not been in trouble with the law in the last two years since his parole from prison.

{¶19} After hearing appellant out, the trial court explained that it was waiting to proceed on reclassification petitions until the Ohio Supreme Court ruled on the constitutionality of Ohio's Adam Walsh Act. The trial court noted that appellant would have to comply with his new, more frequent registration requirements in the interim, although community notification would not yet be employed due to a federal court

shall use the phrase "Ohio's Adam Walsh Act" when referring to the version of the SORN Act at issue in this case.

injunction. The court further explained that appellant could petition for nonnotification if the law was found to be constitutional. Appellant was given 30 days to provide the court with the paperwork for his conviction and original classification.

{¶10} On April 29, 2008, the trial court filed an entry staying the proceeding on appellant's petition challenging his sex offender reclassification. The purpose of the stay was to grant appellant an additional 30 days to submit "further arguments or evidence regarding the constitutionality of his reclassification" to the court. The record does not indicate that appellant availed himself of this opportunity to present further arguments or evidence.

{¶11} The state moved to dismiss appellant's petition on March 5, 2009, citing this court's decision in *State v. Williams*, Warren App. No. CA2008-02-029, 2008-Ohio-6195 (upholding Ohio's Adam Walsh Act on numerous constitutional grounds). Rather than setting an oral hearing, the trial court filed an entry notifying the parties that the case was to be submitted to the court on April 17, 2009 for a decision on the state's dismissal motion. The entry stated that there would be no appearances necessary, and that materials or arguments were due by the submission date. The record does not indicate that appellant submitted any materials or arguments to counter the state's motion to dismiss his petition.

{¶12} In holding that R.C. 2950.031(E) requires a hearing upon a timely and properly filed petition, this court explained:

{¶13} "In order to comport with due process, the type of hearing contemplated by the statute must be one at which both parties are given the opportunity to present evidence, in accordance with R.C. 2950.031(E), relevant to the propriety of the manner in which the new registration requirements have been applied to the offender or whether the new registration requirements should be applied to the offender at all." *Brewer* at

¶16.

{¶14} As the aforementioned statement of procedure in this case indicates, appellant was afforded multiple opportunities to present his arguments challenging his reclassification. Appellant's arguments were first conveyed to the court in the petition itself, in which he listed six grounds in favor of keeping his original classification. These included the facts that he was on parole for two years and successfully complied with the court's demands, served over 15 years in prison for his crimes, and completed numerous programs including a sex offender program, a relapse prevention program, and three years of after care classes.

{¶15} Appellant also had an opportunity to voice his opposition to his reclassification when the trial court invited the parties to submit arguments on the state's motion to dismiss. He declined.

{¶16} Most significant and relevant is the fact that the trial court held a hearing on appellant's petition on March 26, 2008. The fact that appellant's petition constituted the subject matter of the hearing was conveyed in the hearing notice and reiterated at the hearing itself. As stated, appellant was given the chance to explain his petition at the hearing. He was further given 30 days to present additional arguments or evidence by way of the court's entry following the hearing. Again, he declined.

{¶17} We find that appellant was afforded a hearing on his petition contesting his sex offender reclassification in accordance with R.C. 2950.031(E). The March 26, 2008 proceeding amounted to a hearing as contemplated by this court in *Brewer*, both in name and in substance. Indeed, appellant was able to convey arguments contesting his reclassification at this hearing. He declined to take advantage of other opportunities to present any additional arguments regarding his reclassification.

{¶18} The fact that the trial court did not immediately rule upon appellant's

petition is of no consequence. The court stated its initial inclination to await a ruling on the constitutionality of Ohio's Adam Walsh Act by the high court, but later issued a decision dismissing appellant's petition. This delayed decision does not invalidate the fact that appellant was afforded his hearing.

{¶19} We conclude that the trial court complied with its duty to hold a hearing on appellant's petition in accordance with R.C. 2950.031(E). Appellant's first assignment of error is overruled.

{¶20} Judgment affirmed.

POWELL, P.J., and YOUNG, J., concur.