

[Cite as *State v. Earnhardt*, 2009-Ohio-3018.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23066
v.	:	T.C. NO. 96 CR 2933/2
KAREN K. EARNHARDT	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	

OPINION

Rendered on the 19th day of June, 2009.

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FROELICH, J.

{¶ 1} Karen K. Earnhardt appeals from a judgment of the Montgomery County Court of Common Pleas, which overruled her constitutional challenges to R.C. Chapter 2950, as amended by Senate Bill 10.

{¶ 2} On December 17, 1996, Earnhardt pled guilty to corruption of a minor, in

violation of R.C. 2907.04, for which the court sentenced her to one year in prison. On July 16, 1997, the court designated Earnhardt a sexually oriented offender, which required her to register annually with the local sheriff's office for ten years, in accordance with the registration requirements set forth in Ohio's Sex Offender Registration and Notification Act, R.C. Chapter 2950 ("SORN"). The court determined that Earnhardt was neither a habitual sexual offender nor a sexual predator.

{¶ 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} On November 29, 2007, Earnhardt received a notice from the Ohio Attorney General, informing her of recent changes to SORN and that she had been reclassified. (Earnhardt did not state to which tier she had been designated, and we find no indication in the record.) On January 18, 2008, Earnhardt filed a petition to contest her reclassification, asserting that her obligation to register was completed in August 2007.

{¶ 5} On January 23, 2008, the State moved to dismiss Earnhardt's petition, claiming that Earnhardt had failed to state a claim upon which relief may be granted and that the court lacked jurisdiction to address constitutional challenges to S.B. 10 in a hearing on a petition to contest reclassification. The State asserted that the constitutionality of S.B. 10 must be raised in a declaratory judgment action.

{¶ 6} On February 22, 2008, the trial court stayed Earnhardt's case pending a selection

of three similar cases in which to raise constitutional challenges to S.B. 10. On October 7, 2008, the trial court overruled Earnhardt's constitutional challenges to S.B. 10, to the extent that any had been raised. Relying upon *State v. Barker* (Aug. 29, 2008), Montgomery C.P. No. 91-CR-504, and *State v. Hoke* (Aug. 29, 2008), Montgomery C.P. No. 91-CR-2354, the trial court summarily concluded that (1) S.B. 10 is not an ex post facto law; (2) the statute's classification, registration, and notice requirements are not impermissibly retroactive; (3) S.B. 10's residency restrictions are unconstitutionally retroactive when applied to require an owner of residential property or a resident of such property, who owned or resided in the property before the enactment of the statute, to vacate the residence; (4) S.B. 10 does not implicate double jeopardy; (5) S.B. 10 does not violate the separation of powers doctrine; (6) S.B. 10 does not entail cruel and unusual punishment; (7) S.B. 10's residency restrictions, applied prospectively, do not violate substantive due process; (8) S.B. 10's scheme does not violate procedural due process; and (9) the retroactive application of S.B. 10 does not constitute a breach of the petitioner's plea agreements. The court noted that, if Earnhardt still desired a hearing, she "must file a separate motion on this issue." Earnhardt did not renew her request for a hearing.

{¶ 7} Earnhardt appeals from the trial court's denial of the constitutional challenges to S.B. 10.

{¶ 8} On December 5, 2009, we notified counsel that a sizable number of cases is currently pending before the Court in which the Montgomery County trial court addressed the constitutionality of S.B. 10 and did so in reliance on the *Barker* decision. We indicated that we would treat *Barker* as the lead case, and we asked counsel to notify the court if they intended to rely on the *Barker* brief in whole, in part, or not at all. Earnhardt and the State have both

indicated that they would rely entirely on the appellate briefs filed in *Barker*.

{¶ 9} Adopting the *Barker* appellant's brief, Earnhardt raises one assignment of error, in which she asserts that S.B. 10 violates the ex post facto clause of the United States Constitution; Section 28, Article II of the Ohio Constitution, which prohibits retroactive legislation; the double jeopardy provisions of the Ohio and United States Constitutions; the separation of powers doctrine; res judicata and collateral estoppel principles; and the cruel and unusual punishment provisions of the Ohio and United States Constitutions.

{¶ 10} Based on this Court's respect for stare decisis and our opinion in *State v. Barker*, Montgomery App. No. 22963, 2009-Ohio-2774, the assignment of error is overruled in its entirety.

{¶ 11} 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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