

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 23222
Plaintiff-Appellee	:	
	:	Trial Court Case No. 08-CV-691
v.	:	
	:	
MARK HAINES	:	(Civil Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 19th day of March, 2010.

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MARK HAINES, 3616 Glaser Drive, Dayton, Ohio 45429
Defendant-Appellant, *pro se*

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FAIN, J.

{¶ 1} Mark W. Haines appeals, *pro se*, from an order overruling his petition to contest reclassification under R.C. Chapter 2950, as amended by Senate Bill 10 (S.B. 10). Haines contends that the reclassification is improper and unconstitutional on several grounds. First, Haines contends that S.B. 10 repealed Ohio’s sexual offender registration and notification laws. Haines also contends that: (1) retroactive

application of S.B. 10 violates the prohibition on ex post facto laws in Article I, Section 10 of the Ohio Constitution and the prohibition against retroactive laws in Article II, Section 28 of the Ohio Constitution; (2) reclassification violates the separation of powers doctrine; (3) retroactive application of S.B. 10 violates the procedural due process protections of the United States and Ohio State Constitutions by extending registration and notification requirements for previously-classified persons without any additional justification or opportunity to be heard; (4) the residency restrictions violate substantive due process protections of the Fourteenth Amendment to the United States Constitution and Section I, Article I of the Ohio Constitution; (5) reclassification is impermissible punishment under the Double Jeopardy Clauses of the United States and Ohio Constitutions; and (6) reclassification is an impermissible breach of contract under the United States and Ohio Constitutions.

{¶ 2} We conclude that none of Haines's arguments have merit. Accordingly, the order from which this appeal is taken is Affirmed.

I

{¶ 3} In October 1996, Haines was convicted of gross sexual imposition and sexual battery in Franklin County, Ohio. Haines resides in Montgomery County, Ohio, and registers with the Montgomery County Sheriff, pursuant to R.C. Chapter 2950.

{¶ 4} In December 2007, Haines received a notice of new classification and registration duties from the Ohio Attorney General. The notification indicates that as of January 1, 2008, Haines's new classification would be "Tier III Sex Offender,"

which obligates Haines to register with the Sheriff every 90 days for life. The notification further provides that Haines would be subject to community notification provisions under R.C. 2950.11, but that the court could make a determination under R.C. 2950.11(F)(2), that removes the community notification requirement. Finally, the notification informs Haines of his right to challenge the new classification and registration requirements, by filing a petition in the court of common pleas for the county in which he resides.

{¶ 5} In January 2008, Haines filed petitions in the trial court, challenging the reclassification and community notification requirements. Initially, the trial court stayed the case, pending a decision in other cases involving the same issues. The trial court subsequently filed a decision in October 2008, overruling the reclassification petition on the basis of decisions of the Montgomery County Common Pleas Court in *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. Based on these prior decisions, the trial court held that: (1) S.B. 10 is not an ex post facto law; (2) the classification, registration, and notice requirements in S.B. 10 are not impermissibly retroactive; (3) S.B. 10's residency restrictions are unconstitutionally retroactive when applied to require owners of residential property or residents of such property, who owned or resided therein before enactment of S.B. 10, 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) retroactive application of S.B. 10 is not a breach of Haines's plea agreements.

{¶ 6} Following this decision, the trial court allowed Haines additional time to file a motion for a separate hearing under R.C. 2950.031(E) or R.C. 2950.032(E). Haines chose not to file a petition. Accordingly, the trial court issued a final appealable order in January 2009, overruling Haines's petition to contest reclassification. On the same day, the court granted Haines's motion for immediate relief from community notification. Haines appeals from the order denying his petition to contest reclassification.

II

{¶ 7} Haines does not identify specific assignments of errors in his brief, but instead lists various challenges to S.B. 10. We have separated these challenges into seven different areas, some of which we will further consolidate for purposes of discussion. The First Assignment of Error, as separated, is as follows:

{¶ 8} "AWA MAY NOT BE APPLIED TO DEFENDANT AS OHIO'S SEX OFFENDER LAWS WERE EFFECTIVELY REPEALED BY SECTION TWO OF S.B. 10."

{¶ 9} Under this assignment of error, Haines contends that the enacting legislation in S.B. 10 is so confusing that the bill effectively repealed Ohio's sex offender laws. Haines, therefore, contends that he cannot be subjected to the registration and reporting requirements in S.B. 10.

{¶ 10} The Ohio General Assembly enacted S.B.10 in response to the federal "Adam Walsh Child Protection and Safety Act" (AWA). S.B. 10 creates a

three-tiered system, in which a sex offender's classification is determined based on the offense for which the offender is initially convicted. Haines contends that conflicting language as to effective dates in Sections one through five of S.B. 10 lead to the conclusion that existing sexual offender laws were repealed, at least between July 1, 2007, and January 1, 2008.

{¶ 11} We disagree. We previously rejected the same argument in *State v. Dobson*, Miami App. No. 2008 CA 43, 2010-Ohio-279. In *Dobson*, we noted that:

{¶ 12} “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.” *Id.* at ¶ 9.

{¶ 13} In the case before us, Haines also became subject to the provisions on S.B. 10 on January 1, 2008. Therefore, regardless of the status of the law prior to that date, Haines was required after that date – January 1, 2008 – to comply with the registration requirements of the new Act.

{¶ 14} The First Assignment of Error is without merit and is overruled.

III

{¶ 15} We will address several of Haines’s constitutional challenges together. For purposes of convenience, we will designate these challenges collectively as the

following assignment of error:

{¶ 16} “S.B. 10 VIOLATES VARIOUS CONSTITUTIONAL PROVISIONS.”

{¶ 17} As noted, Haines contends that retroactive application of S.B. 10 violates the prohibition on ex post facto laws in Article I, Section 10 of the Ohio Constitution and the prohibition against retroactive laws in Article II, Section 28 of the Ohio Constitution; (2) reclassification violates the separation of powers doctrine; (3) retroactive application of S.B. 10 violates the procedural due process protections of the United States and Ohio States Constitutions by extending registration and notification requirements of previously-classified persons without any additional justification or opportunity to be heard; (4) the residency restrictions violate substantive due process protections of the Fourteenth Amendment to the United States Constitution and Section I, Article I of the Ohio Constitution; and (5) reclassification is impermissible punishment under the Double Jeopardy Clauses of the United States and Ohio Constitutions.

{¶ 18} We have previously rejected these contentions in other sexual offender reclassification cases. See, e.g., *State v. Desbiens*, Montgomery App. No. 22489, 2008-Ohio-3375; *State v. Barker*, Montgomery App. No. 22963, 2009-Ohio-2774; *Dobson*, 2010-Ohio-279; and *State v. Heys*, Miami App. No. 09-CA-04, 2009-Ohio-5397. In *Desbiens*, we held that “S.B. 10 sets forth a civil and non-punitive reclassification and registration scheme.” *Id.* at ¶ 26, citing *State v. King*, Miami App. No. 08-CA-02, 2008-Ohio-2594. We therefore rejected the petitioner’s claims that “S.B. 10 violates several constitutional rights, including his right to protection from ex post facto laws, his right to substantive due process, his

right to contract, and his right to procedural due process.” *Id.* at ¶ 18.

{¶ 19} In *Barker*, we noted that:

{¶ 20} “In July 2008, this court held that S.B. 10 did not offend the ex post facto clause of the United States Constitution because S.B. 10 is civil and non-punitive. * * * In November, 2008, we held S.B. 10 did not violate the ex facto clause or retroactive clause of the Ohio Constitution. * * * Having determined * * * that S.B. 10 is civil and non-punitive, Barker’s claim that the legislation violates the cruel and unusual punishment clauses and the double jeopardy clauses of the United States and Ohio Constitutions must fail as well.” 2009-Ohio-2774, at ¶ 3 (citations omitted).

{¶ 21} We also held in *Barker* that S.B. 10 does not violate the separation of powers doctrine. We observed that “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.” *Id.* at ¶ 10. *Barker* further noted that various Ohio appellate districts have rejected separation of powers challenges to S.B. 10. *Id.* at ¶ 11, referring to opinions of the Third, Fourth, Fifth, Sixth, Tenth, and Twelfth appellate districts.

{¶ 22} Subsequently, in *Heys*, we rejected the petitioner’s contention that S.B. 10 deprived him of substantive and procedural due process rights. We concluded that the petitioner, Heys,

{¶ 23} “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. * * *

{¶ 24} “Furthermore, no liberty interest is implicated. * * * ‘A constitutionally protected liberty interest has been defined as freedom from bodily restraint and punishment.’ * * * The Ohio Supreme Court held that the previous registration requirements involved no bodily restraint or punishment; they are neither criminal nor punitive in nature. * * * Similarly, the S.B. 10 requirements have also been found to be non-punitive.” 2009-Ohio-5397, at ¶ 11-12 (citations omitted).

{¶ 25} Finally, regarding residency restrictions, we commented in *Dobson* as follows:

{¶ 26} “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. * * * 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. * * * ” 2010-Ohio-279, at ¶ 15, citing *Heys*, 2009-Ohio-5397 (other citations omitted).

{¶ 27} In the case before us, Haines has neither alleged nor established that he has been deprived of property rights. Haines, therefore, lacks standing to pursue

this claim. Furthermore, as noted in *Dobson*, we have rejected the contention that residency restrictions infringe upon a fundamental right.

{¶ 28} Accordingly, Haines’s constitutional challenges to S.B. 10 are without merit, and are overruled.

IV

{¶ 29} Haines’s final assignment of error is as follows:

{¶ 30} “RECLASSIFICATION IS AN IMPERMISSIBLE BREACH OF CONTRACT UNDER THE UNITED STATES AND OHIO CONSTITUTIONS.”

{¶ 31} Under this assignment of error, Haines contends that reclassification is an impermissible breach of his plea agreement, because he entered a plea in 1997, in exchange for agreed-upon registration requirements and community notification provisions that were specified at the time. Haines contends that the State is bound by the agreement, and that S.B. 10 impermissibly impairs a contractual obligation in violation of Section 28, Article II, of the Ohio Constitution.

{¶ 32} This argument has previously been rejected by various appellate districts. In *Burbrink v. State*, Hamilton App. No. C-081075, 2009-Ohio-5346, the First District Court of Appeals made the following observations:

{¶ 33} “The Fifth District Court of Appeals stated * * * that the ‘real issue is whether the law’ in effect at the time the defendant entered into his plea bargain ‘provided that the General Assembly could change things, and * * * ex post facto and retroactivity principles do allow the General Assembly to impose new community notification on prior offenders. “Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential

attributes of sovereign power is also read into contracts as a postulate of the legal order.” ’ * * *

{¶ 34} “At the time he entered his plea, Burbrink had no reasonable expectation that his sex offense would never be made the subject of future sex-offender legislation and no vested right concerning his registration duties. * * * [W]here no vested right has been created, “a later enactment will not burden or attach a new disability to a past transaction or consideration in the constitutional sense, unless the past transaction or consideration * * * created at least a reasonable expectation of finality.” ’ * * * Sex offenders have no expectation of finality in the consequences of the judgments against them. * * * The state could not and did not contract to bar the legislature from modifying sex-offender registration and notification statutes. * * * Burbrink had no vested contractual right with which the legislature could interfere. * * * Therefore, the retroactive application of S.B. 10’s tier-classification and registration requirements does not violate the Contract Clause of the Ohio and United States constitutions.” Id. at ¶ 8-9 (footnotes and citations omitted).

{¶ 35} Accordingly, Haines had no vested contractual right with which the legislature could interfere. Haines’s final assignment of error is overruled.

V

{¶ 36} All of Haines’s assignments of error having been overruled, the order of the trial court from which this appeal is taken is Affirmed.

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GRADY and FROELICH, JJ., concur.

Copies mailed to:

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