

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

WILLIAM M. ENGELS,	:	APPEAL NO. C-080725
	:	TRIAL NO. SP-0800015
Petitioner-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
STATE OF OHIO,	:	
	:	
Respondent-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Petitioner-appellant William M. Engels was found guilty by a jury of three counts of rape. He was sentenced to three consecutive life sentences in 1994. In 2002, Engels was returned for a sexual-offender-classification hearing, and he was designated a sexually oriented offender. Engels was released in November 2004. Under former R.C. Chapter 2950, after his release Engels was required to annually register as a sexual offender for ten years.

In December 2007, Engels received a notice from the Ohio Attorney General stating that he had been reclassified under Am.Sub.S.B. No. 10 (“Senate Bill 10”) as a Tier III sex offender and that he was required to register with the local sheriff every 90 days for life. Engels filed an R.C. 2950.11(F)(2) motion for immediate relief from the community-notification provisions. The trial court ultimately granted Engels’s R.C.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

2950.11(F)(2) motion, exempting him from community notification. Engels also filed an R.C. 2950.031(E) petition to contest his reclassification, challenging the constitutionality of Senate Bill 10. After a hearing, the trial court overruled Engels's constitutional challenges to Senate Bill 10 and denied his petition.

Engels's assignment of error, which alleges that the trial court erred in denying his petition to contest his reclassification because the retroactive application of Senate Bill 10's tier-classification and registration requirements is unconstitutional, is overruled.

We held in *Sewell v. State*² that the retroactive application of Senate Bill 10's tier-classification and registration requirements does not violate the prohibition on retroactive laws contained in Section 28, Article II of the Ohio Constitution, the Ohio Constitution's Due Process Clause, the Double Jeopardy Clause of the Ohio Constitution, or the separation-of-powers doctrine.

"The Ex Post Facto Clause applies only to criminal statutes."³ We held in *Sewell* that the tier-classification and registration provisions of Senate Bill 10 are remedial and not punitive, and that they do not have the effect of converting a remedial statute into a punitive one. Because Senate Bill 10's classification and registration provisions are civil and remedial, not criminal, they do not violate the constitutional ban on ex post facto laws.

Engels has no standing to challenge Senate Bill 10's residency restriction because he has not shown that he lives or owns property within the restricted area or

² 1st Dist. No. C-080503, 2009-Ohio-872.

³ See *State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291, 700 N.E.2d 570, citing *California Dept. of Corrections v. Morales* (1995), 514 U.S. 499, 504, 115 S.Ct. 1597, and *Collins v. Youngblood* (1990), 497 U.S. 37, 43, 110 S.Ct. 2715.

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that he has been forced to move outside the restricted area.⁴ We note that the Ohio Supreme Court held in *Hyle v. Porter*⁵ that because the residency restriction in former R.C. 2950.031 was not expressly made retrospective, it could not be applied to an offender who had bought his home and committed his offense before the effective date of the statute.

Engels has no standing to assert that the retroactive application of Senate Bill 10's tier-classification and registration requirements violates the Contract Clause of the Ohio Constitution because Engels was found guilty by a jury and did not enter into a plea agreement with the state.

Engels's argument that he was incorrectly classified as a Tier III sex offender is meritless. Engels was convicted of rape, and under R.C. 2950.01(G)(1)(a) he is a Tier III sex offender.

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., HILDEBRANDT and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on March 18, 2009

per order of the Court _____
Presiding Judge

⁴ See *State v. Randlett*, 4th Dist. No. 08CA3046, 2009-Ohio-112; *State v. Swank*, 11th Dist. No. 2008-L-019, 2008-Ohio-6059; *State v. Duncan*, 3rd Dist. No. 7-08-03, 2008-Ohio-5830.

⁵ 117 Ohio St.3d 165, 2008-Ohio-542, 882 N.E.2d 899.