

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

JAMES E. JOHNSON,	:	APPEAL NO. C-080997
	:	TRIAL NO. SP-0800078
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

In 2005, petitioner-appellant James E. Johnson pleaded guilty to and was convicted of sexual battery. He was designated a sexually-oriented offender. Under former R.C. Chapter 2950, Johnson was required to annually register as a sexual offender for ten years.

Johnson 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. Johnson 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 Johnson’s constitutional challenges to Senate Bill 10 and denied his petition. The court determined that Johnson was not subject to community notification.

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

Johnson's first assignment of error, which alleges that the retroactive application of Senate Bill 10's tier-classification and registration requirements violates the constitutional ban on ex post facto laws, is overruled.

"The Ex Post Facto Clause applies only to criminal statutes."² We held in *Sewell v. State*³ 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.

Johnson's second, third, and fourth assignments of error are overruled because 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 Double Jeopardy Clause of the Ohio Constitution, or the separation-of-powers doctrine.⁴ Johnson's arguments under the United States Constitution are also overruled on *Sewell's* reasoning.

Johnson's fifth assignment of error is overruled. Johnson 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 that he has been forced to move outside the restricted area.⁵ We note that the Ohio Supreme Court held in *Hyle v. Porter*⁶ that because the residency restriction in former R.C. 2950.031 was not expressly made

² 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.

³ 181 Ohio App.3d 280, 2009-Ohio-872, 908 N.E.2d 995.

⁴ *Id.*

⁵ 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.

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

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.

The sixth assignment of error is overruled because there is no evidence in the record that Johnson's registration requirement was a term of any plea agreement. After reviewing the transcripts of Johnson's plea hearing and sentencing hearing, the trial court stated, "Well, I can't, based upon what I'm seeing here, find that there was a contractual agreement between the State of Ohio and this defendant as to what his classification would be." Our review of the record confirms that the trial court was correct in concluding that Johnson had not shown that a ten-year reporting requirement was a term of his plea agreement. Therefore, the retroactive application of Senate Bill 10's tier-classification and registration requirements does not impair any contract between Johnson and the state or violate his constitutional right to contract.

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., SUNDERMANN and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on October 21, 2009
per order of the Court _____.
Presiding Judge