

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

IN RE: CARL E. MCCLURG, III	:	APPEAL NO. C-081233
	:	TRIAL NO. 08-1251X
	:	<i>JUDGMENT ENTRY.</i>
	:	
	:	
	:	

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

On November 20, 2006, in Licking County, Ohio, petitioner-appellant Carl E. McClurg, III, was adjudicated delinquent for committing an act that if committed by an adult would have constituted the sexually-oriented offense of rape. He was designated a juvenile-offender registrant and was required to register as a sexual offender annually for ten years.

McClurg 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. McClurg filed an R.C. 2950.031(E) petition to contest his reclassification, challenging

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

the constitutionality of Senate Bill 10. After a hearing, the trial court overruled McClurg's constitutional challenges to Senate Bill 10 and denied his petition.

McClurg's two assignments of error, which allege that the retroactive application of Senate Bill 10's tier-classification and registration requirements violates the constitutional ban on ex post facto laws, the prohibition on retroactive laws contained in Section 28, Article II of the Ohio Constitution, and the Double Jeopardy Clause of the Ohio Constitution, are 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.

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 or the Double Jeopardy Clause of the Ohio Constitution.⁴ McClurg's arguments under the United States Constitution are also overruled on *Sewell's* reasoning.

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.*

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For the reasons set forth in *Sewell*, we join the Third,⁵ Fifth,⁶ Eighth,⁷ Ninth,⁸ Eleventh,⁹ and Twelfth¹⁰ Appellate Districts and uphold the constitutionality of Senate Bill 10 as applied to juvenile offenders.

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., DINKELACKER and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on December 23, 2009

per order of the Court _____
Presiding Judge

⁵ See *In the Matter of Copeland*, 3rd Dist. No. 1-08-40, 2009-Ohio-190; *In the Matter of Gant*, 3rd Dist. No. 1-08-11, 2008-Ohio-5198.

⁶ See *In re M.E.*, 5th Dist. No. 2008CA00161, 2009-Ohio-1762; *In re Adrian R.*, 5th Dist. No. 08-CA-17, 2008-Ohio-6581.

⁷ See *In re J.M.*, 8th Dist. No. 91800, 2009-Ohio-2880.

⁸ See *In re G.E.S.*, 9th Dist. No. 24079, 2008-Ohio-4076.

⁹ See *In re D.P.*, 11th Dist. No. 2008-L-186, 2009-Ohio-6149.

¹⁰ See *In the Matter of S.R.P.*, 12th Dist. No. CA2007-11-027, 2009-Ohio-11; *In re A.R.*, 12th Dist. No. CA2008-03-036, 2008-Ohio-6566.