No. 08-CA-168
Court of Appeals of Ohio, Fifth District, Richland County

# Palmer v. State

2009 Ohio 3355
Decided Jun 25, 2009

No. 08-CA-168.

DATE OF JUDGMENT ENTRY: June 25, 2009.

Civil Appeal from Richland County Court of Common Pleas, Case No. 08-CV-121h.

Reversed.

David D. Palmer, for Petitioner-Appellee.

Frank Ardis, JR., Assistant Prosecuting Attorney, Richland County, Ohio, Kirsten Pscholka-Gartner, Assistant Prosecuting Attorney, Richland County Proseuctor's Office, for Respondent-Appellant.

Before: William B. Hoffman, P.J. Julie A. Edwards, J. Patricia A. Delaney, J.

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2 OPINION *2

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EDWARDS, J.

**{¶ 1}** Appellant, the State of Ohio, appeals a judgment of the Richland County Common Pleas Court finding Senate Bill 10, Ohio's Adam Walsh Act, to be unconstitutional. Appellee is David Palmer.

## STATEMENT OF FACTS AND CASE

**{¶ 2}** Appellee David Palmer was convicted of two counts of rape in 1996 in Montgomery County, Ohio. Appellee is incarcerated in Richland County. While incarcerated, appellee received notice that effective January 1, 2008, he would be reclassified for purposes of sex offender registration as a Tier III offender pursuant to Senate Bill 10, the Adam Walsh Act effective July 1, 2007. On January 17, 2008, appellee filed a petition in the Richland County Common Pleas Court to contest his sex offender registration reclassification, alleging that the Act is unconstitutional.

**{¶ 3}** The trial court found that based on *Sigler v. State of Ohio*, Case Number 07 CV 1863, in which the trial court had found the Adam Walsh Act to be an unconstitutional violation of the ex post facto clause and the prohibition on retroactive laws, application of the Act to appellee was barred because he had been previously sentenced and classified under the law in existence when he was sentenced.

**{¶ 4}** The state assigns four errors on appeal:

**{¶ 5}** "I. WHETHER, BEYOND A REASONABLE DOUBT, SENATE BILL 10 AND THE CONSTITUTIONAL PROVISIONS CITED BY THE TRIAL COURT ARE CLEARLY INCOMPATIBLE, AND WHETHER THERE IS NO SET OF CIRCUMSTANCES UNDER WHICH THE SENATE BILL 10

WOULD BE VALID. THE TRIAL COURT PURPORTED TO INVALIDATE THE LEGISLATION, RATHER THAN [3] *3

THE STATUTORY PROVISIONS ACTUALLY AT ISSUE IN THIS MATTER. HENCE, BY INVALIDATING THE `ADAM WALSH ACT,' THE COURT APPARENTLY PURPORTED TO INVALIDATE EVERY STATUTE AMENDED BY THE SB10, DESPITE THE NARROW CLAIM BEFORE IT. THE COURT BELOW DID NOT PROPERLY APPLY, OR SUBSTANTIATE DIVERGENCE FROM, THE PRESUMPTION OF CONSTITUTIONALITY.

**{¶ 6}** "II. WHETHER SENATE BILL 10'S LEGISLATIVE ADJUSTMENT TO THE FREQUENCY AND DURATION OF APPELLEE'S PRE-EXISTING DUTY TO REGISTER RENDERED THE STATUTE UNCONSTITUTIONALLY RETROACTIVE. A STATUTE FOUND TO BE RETROACTIVE IS ONLY UNCONSTITUTIONAL IF IT SIGNIFICANTLY BURDENS A VESTED SUBSTANTIVE RIGHT, BUT NOT IF IT IS REMEDIAL. AS THE OHIO SUPREME COURT HAS CONSISTENTLY HELD UNDER THE STATUTORY FRAMEWORK AMENDED BY THE SENATE BILL 10, THAT FRAMEWORK IS REMEDIAL IN NATURE. THE GENERAL ASSEMBLY EXPRESSED ITS INTENT THAT R.C. CHAPTER 2950, AS AMENDED, REMAIN REMEDIAL IN NATURE.

**{¶ 7}** "III. WHETHER SENATE BILL 10'S LEGISLATIVE ADJUSTMENT TO THE FREQUENCY AND DURATION OF APPELLEE'S PRE-EXISTING DUTY TO REGISTER CONSTITUTED SUCCESSIVE PUNISHMENT IN VIOLATION OF THE EX POST FACTO CLAUSE. IT WAS, INSTEAD, A REMEDIAL, CIVIL STATUTE THAT DID NOT IMPACT OFFENDERS' SENTENCES FOR THE CRIMES THEY COMMITTED. [4] *4

**{¶ 8}** "IV. WHETHER A PLEA AGREEMENT BETWEEN AN OFFENDER AND THE PROSECUTING ATTORNEY CREATED A VESTED, SETTLED EXPECTATION THAT THE OFFENDER'S CLASSIFICATION WOULD NEVER CHANGE. THE CLASSIFICATIONS OF SB 10, AND PRIOR CLASSIFICATIONS IMPOSED PURSUANT TO STATUTE BY THE COURT, DO NOT, AND DID NOT, CREATE THE EXPECTATION THAT CONVICTED SEX OFFENDERS WOULD NEVER AGAIN BE THE SUBJECT OF LEGISLATIVE ACTION."

## I, II, III, IV

**{¶ 9}** The assignments of error raised by the appellant are identical to those raised by the State of Ohio in *Sigler v. Ohio*, Richland App. No. 08-CA-79, 2009-Ohio-2010. In *Sigler*, we sustained all four assignments of error, finding that the trial court erred in finding the Adam Walsh Act facially unconstitutional, and erred in finding the Act is unconstitutionally retroactive and violates the ex post facto clause. We further found that the changes in the registration law did not impinge upon an offender's right to contract by way of a plea agreement. [5] *5

**{¶ 10}** For the reasons stated in *Sigler*, supra, we sustain all four of appellant's assignments of error.

**{¶ 11}** The judgment of the Richland County Court of Common Pleas is reversed.

Edwards, J., Hoffman, P.J. and Delaney, J. concur. [6] *6

## JUDGMENT ENTRY

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Richland County Court of Common Pleas is reversed. Costs assessed to appellee. [1] *1