

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

MICHAEL H. AVERILL,	:	APPEAL NO. C-090058
	:	TRIAL NO. SP-0800200
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 Clermont County, Ohio, in 1997, petitioner-appellant Michael H. Averill pleaded guilty to and was convicted of gross sexual imposition and attempted abduction. He was placed on probation, violated his probation, was incarcerated, and was ultimately released in 1999. Averill was designated a sexually-oriented offender. Under former R.C. Chapter 2950, Averill was required to annually register as a sexual offender for ten years.

Averill 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 II sex offender and that he was required to register with the local sheriff every 180 days for 25 years. Averill 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 Averill’s

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

constitutional challenges to Senate Bill 10. The trial court found that Averill had been incorrectly classified as a Tier II sex offender and that his correct classification was a Tier I offender. As a Tier I offender, Averill is required to register annually for 15 years.

Averill'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.

Averill'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 Averill's arguments under the United States Constitution are also overruled on *Sewell's* reasoning.

Averill's fifth assignment of error is overruled. Averill has no standing to challenge Senate Bill 10's residency restriction because he has not shown that he lives in or owns property within the restricted area or that he has been forced to move outside

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.*

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 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 and seventh assignments of error are overruled because there is no evidence in the record that Averill's registration requirement was a term of any plea agreement. Therefore, the retroactive application of Senate Bill 10's tier-classification and registration requirements does not impair any contract between Averill and the state or violate his constitutional right to contract.

The eighth assignment of error, alleging that the retroactive application of Senate Bill 10's registration requirements constitutes cruel and unusual punishment, is overruled because the statutes are civil and remedial, not punitive.⁷ Therefore, the registration requirements cannot be viewed as punishment.⁸

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 MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on January 27, 2010

per order of the Court _____.
Presiding Judge

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.

⁷ See *Sewell v. State*, supra, at fn. 3.

⁸ See *id.*; *State v. Williams*, 12th Dist. No. CA2008-02-029, 2008-Ohio-6195; *State v. Byers*, 7th Dist. No. 07 CO 39, 2008-Ohio-5051.