

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

MARIEL K. WHITE,	:	APPEAL NO. C-090177
	:	TRIAL NO. SP-0800606
Petitioner-Appellant,	:	
	:	<i>DECISION.</i>
vs.	:	
STATE OF OHIO,	:	
	:	
Respondent-Appellee.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: January 29, 2010

*Dinsmore & Shohl, LLP, Michael Newman, and Christopher R. McDowell, for
Petitioner-Appellant,*

*Joseph T. Deters, Hamilton County Prosecuting Attorney, and Paula E. Adams,
Assistant Prosecuting Attorney, for Respondent-Appellee.*

Please note: This case has been removed from the accelerated calendar.

DINKELACKER, Judge.

{¶1} On April 19, 1999, petitioner-appellant Mariel K. White pleaded guilty in a plea bargain to one count of sexual battery in violation of R.C. 2907.03(A)(1). The “entry withdrawing plea of not guilty and entering plea of guilty” signed by White stated, “I understand and acknowledge that I have agreed with the prosecution on a sentence, to wit: 3 yrs. incarceration, treatment while incarcerated, aftercare if indicated, classified as a sexually oriented offender rather than a sexual predator.” The court accepted White’s plea, found him guilty of sexual battery, and imposed sentence. The sentencing entry stated that White was “found to be a sexually oriented offender.” Under former R.C. Chapter 2950, after his release White was required to annually register as a sexual offender for ten years.

{¶2} In 2007, the General Assembly enacted Am.Sub.S.B. No. 10 (“Senate Bill 10”) to implement the federal Adam Walsh Child Protection and Safety Act of 2006. Senate Bill 10 amended various sections of R.C. Chapter 2950. White was notified that he had been reclassified under 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.

{¶3} White filed an R.C. 2950.031(E) petition to contest his reclassification, challenging the constitutionality of Senate Bill 10. He also filed an R.C. 2950.11(F)(2) motion for immediate relief from the community-notification provisions, which the trial court ultimately granted. After a hearing, the trial court overruled White’s constitutional challenges to Senate Bill 10 and denied his R.C. 2950.031(E) petition.

{¶4} White’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.

{¶5} “The Ex Post Facto Clause applies only to criminal statutes.”¹ We held in *Sewell v. State*² 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.

{¶6} White’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.³ White’s arguments under the United States Constitution are also overruled on *Sewell’s* reasoning.

{¶7} White’s fifth assignment of error is overruled. White 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 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.

{¶8} White argues under his sixth and seventh assignments of error that reclassifying him as a Tier III sex offender under Senate Bill 10 constituted a breach

¹ 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.

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

³ *Id.*

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.

of his plea agreement and an impairment of an obligation of contract, in violation of Section 28, Article II of the Ohio Constitution and Clause I, Section 10, Article I of the United States Constitution, because his plea agreement was a contract with the state of Ohio that he would be obligated to register as a sex offender for only ten years.

{¶9} Section 28, Article II of the Ohio Constitution and Clause I, Section 10, Article I of the United States Constitution provide that no laws shall be passed that impair the obligation of contracts. “[A]ny change in the law which impairs the rights of either party, or amounts to a denial or obstruction of the rights accruing by contract, is repugnant to the Constitution.”⁶ Because plea agreements are contracts between the state and criminal defendants, principles of contract law are applicable to their interpretation and enforcement.⁷

{¶10} We held in *Burbrink v. State*⁸ that the retroactive application of Senate Bill 10’s tier-classification and registration requirements to a sex offender who had pleaded guilty to a sexually-oriented offense pursuant to a plea bargain under former R.C. Chapter 2950 did not violate the Contract Clause of the Ohio and United States Constitutions, because when the offender entered his plea he had no reasonable expectation that his sex offense would never be made the subject of future legislation and no vested right concerning his registration duties. Senate Bill 10’s tier-classification and registration requirements are remedial, collateral consequences of the underlying criminal sex offense, and they do not affect a plea agreement previously entered between the state and the offender.⁹

{¶11} We pointed out in *Burbrink* that, under former R.C. Chapter 2950, an offender who pleaded guilty to a sexually-oriented offense was by operation of law a

⁶ See *Kiser v. Coleman* (1986), 28 Ohio St.3d 259, 503 N.E.2d 753.

⁷ See *State v. Netherland*, 4th Dist. No. 08CA3043, 2008-Ohio-7007, citing *State v. Adkins*, 161 Ohio App.3d 114, 2005-Ohio-2577, 829 N.E.2d 729; *State v. Bethel*, 110 Ohio St.3d 416, 2006-Ohio-4853, 854 N.E.2d 150; *State v. Vega*, 1st Dist. No. C-020486, 2003-Ohio-1548.

⁸ 1st Dist. No. C-081075, 2009-Ohio-5346.

⁹ See *id.* at ¶10.

sexually-oriented offender who had to register annually for ten years. By not requesting a higher sexual-offender classification, the state had fulfilled its part of the plea agreement.¹⁰ Once the offender had pleaded guilty and had been sentenced, both he and the state had fulfilled their respective parts of the plea agreement, and no action taken after that time could have breached the plea agreement.¹¹

{¶12} We hold in this case that pursuant to *Burbrink*¹² the retroactive application of Senate Bill 10's tier-classification and registration requirements did not violate the Contract Clause of the Ohio and United States Constitutions because it did not impair White's rights under any contract with the state of Ohio that, under his plea agreement, he would be obligated to register as a sex offender for only ten years. The application of Senate Bill 10's registration requirements did not constitute a breach of White's plea agreement or an impairment of his right to contract. The sixth and seventh assignments of error are overruled.

{¶13} 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.¹³ Therefore, the registration requirements cannot be viewed as punishment.¹⁴

{¶14} The judgment of the trial court is affirmed.

Judgment affirmed.

HILDEBRANDT, P.J., and CUNNINGHAM, J., concur.

Please Note:

The court has recorded its own entry this date.

¹⁰ See *id.* at ¶11.

¹¹ See *id.*

¹² See *id.*

¹³ See *Sewell v. State*, *supra*, at fn. 2.

¹⁴ 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.