

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

STATE OF OHIO,	:
	:
Respondent-Appellee,	: Case No. 09CA3089
	:
vs.	: Released: December 8, 2009
	:
ANTHONY J. DENOMA,	: <u>DECISION AND JUDGMENT</u>
	: <u>ENTRY</u>
Petitioner-Appellant.	:

APPEARANCES:

Anthony J. DeNoma, Chillicothe, Ohio, Appellant, pro se.

Michael M. Ater, Ross County Prosecuting Attorney, and Jeffrey C. Marks, Ross County Assistant Prosecuting Attorney, Chillicothe, Ohio, for Appellee.

McFarland, J.:

{¶1} Appellant, Anthony J. DeNoma, appeals the Ross County Court of Common Pleas’ dismissal of his petition contesting his reclassification as a Tier III sexual offender. On appeal, Appellant raises a single assignment of error, contending “[p]lain error of cumulative professional misconduct defrauding and depriving Defendant of his fundamental equal protection Constitutional and Civil Rights of fair and just Due Process of Law, substantially prejudicing Defendant.” Because we conclude, as did the trial

court, that Appellant's petition was time-barred, we affirm the trial court's dismissal of Appellant's petition.

FACTS

{¶2} Based upon information contained in Appellant's petition for reclassification filed below, Appellant was convicted of rape, felonious sexual penetration and gross sexual imposition in 1995.¹ He was later reclassified a Tier III Sex Offender under new provisions enacted as part of Ohio's "Adam Walsh Child Protection and Safety Act" ("AWA"), Am.Sub.S.B. 10, 2007 Ohio Laws, File No. 10. The record reveals and Appellant admits that he received notice of this reclassification on January 2, 2008, via a letter from the Ohio Attorney General. A review of the record further indicates that the letter, in addition to notifying Appellant of his new classification and registration duties, also informed Appellant of his right to contest application of the new classification and registration requirements, pursuant to R.C. 2950.032(E). Specifically, the letter informed Appellant that he had "sixty (60) days after receipt of this letter to file a petition in the Court of Common Pleas in the county where [he] reside[s] in Ohio, or if [he]

¹ Although Appellant's petition states that he was convicted of these offenses, a copy of a Hamilton County Court of Common Pleas "Judgment Entry: Sentence: Incarceration," dated April 6, 1995, which Appellant attached in support of his petition, states that Appellant pled guilty and was convicted of rape and felonious sexual penetration only. Additionally, Appellant also attached to his petition a copy of a Hamilton County Court of Common Pleas "Entry Finding Against Adjudication As A Sexual Predator," dated October 5, 2001.

reside[s] outside of the state, the county in which [he] work[s] or attend[s] school.”

{¶3} On September 16, 2008, Appellant commenced the action below in the Ross County Court of Common Pleas, challenging that reclassification on various grounds and requesting court appointed counsel.² On October 21, 2008, the trial court filed a journal entry denying Appellant’s request for appointment of counsel. Then, on October 30, 2008, the State filed a motion to dismiss Appellant’s petition, alleging that because Appellant had failed to contest the reclassification within sixty days after receiving notice thereof, the petition should be dismissed. By journal entry dated December 12, 2008, the trial court dismissed Appellant’s petition based upon Appellant’s failure to comply with the time requirements set forth in R.C. 2950.031(E). This appeal followed.

ASSIGNMENT OF ERROR

“I. PLAIN ERROR OF CUMULATIVE PROFESSIONAL MISCONDUCT DEFRAUDING AND DEPRIVING DEFENDANT OF HIS FUNDAMENTAL EQUAL PROTECTION CONSTITUTIONAL AND CIVIL RIGHTS OF FAIR AND JUST DUE PROCESS OF LAW, SUBSTANTIALLY PREJUDICING DEFENDANT.”

² On appeal, Appellant alleges that he timely, although mistakenly, filed a petition contesting reclassification in the Hamilton County Court of Common Pleas and attached several pleadings and transcript pages which purport to relate to that filing. However, because this argument and these documents were not brought up or made a part of the record below, we will not consider them on appeal.

LEGAL ANALYSIS

{¶4} We construe Appellant’s sole assignment of error, from his pro se filings, as a challenge to the constitutionality of his reclassification and reporting duties under new provisions enacted as part of Ohio’s “Adam Walsh Child Protection and Safety Act” (“AWA”), Am.Sub.S.B. 10, 2007 Ohio Laws, File No. 10. Appellant further advances two issues for our review under this assignment of error, which we set forth verbatim, as follows:

“ISSUE 1.

The States complicity in fraudulent material misrepresentation and frivolous conduct, obstructing official business, interfering with civil rights.

ISSUE 2.

The courts prejudice and partiality, without jurisdiction denying Defendant his fundamental constitutional and civil right to be present in a court of law, to be heard in his defense of his vested property.”

{¶5} A review of the record reveals that the trial court dismissed Appellant’s petition, after holding a non-oral hearing, without addressing the merits, based upon the fact that Appellant had failed to comply with the time requirements in filing his petition. After reviewing the record in this case, we agree with the trial court’s decision and therefore affirm its dismissal of Appellant’s petition.

{¶6} As set forth above, by Appellant’s own admission, he received notice of his reclassification on January 2, 2008. That notice informed

Appellant of his right to contest the reclassification and also informed Appellant that the reclassification had to be contested within sixty days of receiving notice and had to be filed in his county of residence. The record further reveals that Appellant did not file a petition contesting reclassification in Ross County, his county of residence, until September 16, 2008, well after the sixty day limit. Thus, the trial court properly dismissed Appellant's petition as being untimely filed.

{¶7} Although Appellant contends on appeal that he filed an earlier, timely, petition contesting reclassification in the Hamilton County Court of Common Pleas, his prior county of residence, there is no evidence we can properly consider to validate Appellant's contentions. Appellant did not raise this argument as part of his petition filed in Ross County. In fact, the pleadings and transcript, which purport to relate to that earlier filing, appear for the first time as attachments to Appellant's brief on appeal and appear nowhere in the record below. As such, we cannot consider them on appeal. Appellant's further allegation that the Ross County prosecutor's office was aware of his earlier filing and tried to conceal such from the trial court is unsupported by the record and wholly without merit.

{¶8} Further, although not specifically set forth in his assignment of error, in the body of his brief, Appellant contends that he was substantially

prejudiced by the trial court's denial of his request for court appointed counsel in the matter below. In *State v. Messer*, Ross App. No. 08CA3050, 2009-Ohio-312, this Court recently noted that S.B. 10 "does not authorize the appointment of counsel." citing, *State v. King*, Miami App. No. 08-CA02, 2008-Ohio-2594, ¶ 4, fn1. Our reasoning was based upon our conclusion that SB 10 remains civil in nature, as opposed to imposing criminal punishment. *Messer* at ¶15. "[L]itigants have no generalized right to appointed counsel in civil actions." *Id.*, relying on, *Graham v. City of Findlay Police Dept.*, Hancock App. No. 5-01-32, 2002-Ohio-1215, citing *State ex rel. Jenkins v. Stern* (1987), 33 Ohio St.3d 108, 515 N.E.2d 928; *Roth v. Roth* (1989), 65 Ohio App.3d 768, 585 N.E.2d 482. As a result, Appellant had no right to appointed counsel in this civil matter and the trial court did not err in denying his request for same.

{¶9} Thus, Appellant's sole assignment of error and the issues related thereto are wholly without merit and, as such, are overruled. Accordingly, the trial court's dismissal of Appellant's petition contesting reclassification is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and that the Appellee recover of Appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.
Exceptions.

Kline, P.J. and Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Judge Matthew W. McFarland

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.