

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

MICHAEL BOLLIN,)	
)	
Plaintiff/Appellee)	
)	
v.)	Case No. 108,819
)	
JUSTIN JONES ex rel. STATE OF)	
OKLAHOMA ex. rel. OKLAHOMA)	
DEPARTMENT OF CORRECTIONS,)	
)	
Defendant/Appellant.)	

PLAINTIFF’S PETITION FOR CERTIORARI

Plaintiff/Appellee through undersigned counsel respectfully petitions this Court for a writ of certiorari from the July 21, 2011, decision of the Court of Civil Appeals, Division IV, reversing the grant of Petitioner’s Motion for Summary Judgment in Oklahoma County Case No. CJ-2010-1835 and remanding to determine as a matter of statutory construction what provisions of OSORA in effect in June 2004 would apply to Petitioner pursuant to the Court of Civil Appeals decision in *Reimers v. Department of Corrections*, Case No. 107,740, 2011 OK CIV ___, 257 P.3d 416. Petitioner petitioned for rehearing on August 9, 2011. Rehearing was denied on August 16, 2011 by the Court of Civil Appeals.

REASONS FOR REVIEW PURSUANT TO RULE 1.178

1. The principal issue is whether Petitioner must register as a sex offender pursuant to 57 O.S. § 582(b) because a) his sole felony conviction in Missouri was issued in 1987, before the November 1, 1989, effective date of the Oklahoma Sex Offender Registration Act (OSORA). Whether or not it is constitutionally permissible as a matter of Equal Protection because persons

convicted in Oklahoma do not have to register if convicted before November 1, 1989; as a matter of the Privileges and Immunities clause prohibiting penalties for moving to another state; as a matter of discrimination prohibited by Art. 2, § 7, Oklahoma Constitution; as a matter of the prohibition against special laws of Art. 5, § 46, Oklahoma Constitution; or permissible as a matter of statutory construction, to require Petitioner to register simply because he was convicted in a state other than Oklahoma. This issue has not been decided by this Court., and thus is a question of substance meriting this Court’s review.

2. Further, the Court of Civil Appeals reversed the finding of unconstitutionality by the District Court in a manner probably not in accord with applicable decisions of the Supreme Court of the United States. It is not in accord with the Constitutions of this state nor of the United States to key the effective date of OSORA applicability to an individual to the date that person moved to Oklahoma, while keying in-state convicted offenders to the date of conviction.

STATEMENT OF FACT

It is undisputed that Petitioner Bollin moved from Missouri to Oklahoma in June 2004, and that his sole conviction giving rise to any registration requirements was in 1987 in Missouri. Petitioner has resided in Craig County, Oklahoma since June 2004. When he moved from Missouri he was exempted from registration in that state, after having complied according to Missouri law, and is no longer required to register in Missouri because he does not reside there.

ARGUMENT FOR ALLOWANCE OF THE WRIT

The Court of Civil Appeals notes in its decision that the language of the 1989 OSORA statute, 57 O.S. § 582, was changed from language applying to “any person . . . who enters this state

after November 1, 1989” to read, both in 1999 and currently, “any person who, after November 1, 1989, resides . . . within the State of Oklahoma. . . .” This change, however, does not disguise the fact that the provisions of § 582(B) violate the privileges and immunities clause of the United States Constitution. Persons convicted before 1989 in Oklahoma need not register. Persons coming to Oklahoma after 1989, whose convictions were before 1989, are required to register. This imposes a severe penalty on persons entering the State.

Unlike the issue of *ex post facto* laws, which pertain to criminal penalties, the Privileges and Immunities Clause and the Equal Protection Clause of the United States Constitution both apply to civil penalties. Thus it is irrelevant to *these* constitutional issues whether sex offender registration is a civil or criminal penalty.¹

The issue remains whether there is any rational basis to require a citizen who has moved to Oklahoma from another state, who has had no convictions of any sort after November 1, 1989, to register, when persons convicted in Oklahoma before 1989 do not have to register. The Oklahoma County District Court could ascertain no rational basis or substantive justification for the difference in treatment, under the Equal Protection Clause, and ruled for Plaintiff. In a 2007 Oklahoma case, Division I of this Court set forth the test for a violation of the Privileges and Immunities Clause:

The court [in *Travis v. Yale & Towne Mfg. Co.*, 252 U.S. 60 (1920)] recognized that

¹Plaintiff believes that it is criminal in nature because failure to comply results in severe penalties and because the restrictions of OSORA are so burdensome as to constitute a criminal penalty resulting from conviction, especially as classification under OSORA is based solely on the crime, with no administrative appeal and no court remedy avenue in place to address the appropriateness of those restrictions in any individual case. Indiana has taken the view that registration is a criminal penalty in *ex post facto* analysis, in *Wallace v. State of Indiana*, 905 N.E.2d 371 (Ind. 2009). Plaintiff recognizes this is not Oklahoma’s view.

different treatment of residents and nonresidents in state tax laws are judged by their practical effect, rather than by their form. *Id.* [at 297] The court explained that in response to a challenge to a state tax law which treats residents and nonresidents differently, the state must show first, a “substantial reason” for the difference in treatment, and second, that the different treatment bears a “substantial relationship” to the stated objective.

Panhandle Producers & Royalty Owners Ass’n v. Oklahoma Tax Comm’n, 2007 OK CIV APP 68, 162 P.3d 960, 967-68. This Court there noted that absolute equality is not required as to taxation, but implicit is that regulation of persons from other states must be “not more onerous in effect.” *Id.*

Clearly, if Plaintiff is required to register, whereas if he had been convicted in Oklahoma he would not be so required to register, under OSORA, there is a far more onerous effect. He is being penalized solely because his conviction was in another state. Records from Missouri and any other state are now readily available to anyone. Plaintiff has not committed any felony or even serious misdemeanor since his pre-1989 conviction. There is no ground for excepting him from the protections of the Privileges and Immunities Clause, nor any rational basis for an exception from the protections of the Equal Protection Clause.

The decision in *Reimers v. Dept. of Corrections*, *supra*, makes it clear that the OSORA is to be applied to persons convicted in Oklahoma according to the date of conviction. Yet here the decision below requires the district court to consider the regulations in effect when Plaintiff moved to Oklahoma in 2004. While it is correct that as a matter of statutory construction the provisions of OSORA are to be applied only prospectively where not made explicitly retroactive by the language of the statute, Petitioner respectfully asks this Court to consider 57 O.S. § 582(b)’s constitutionality. Petitioner submits that it violates provision of the state and federal constitutions. As applied to Petitioner violates the U.S. Constitution’s Privileges and Immunities Clause and the Equal Protection

Clause of the Sixth Amendment, and violates the anti-discrimination clause of Art. 2, § 7, Oklahoma Constitution, covering due process of law.

In addition, § 582(b) has the accoutrements of a special law proscribed by Art. 5, § 46, Oklahoma Constitution, in singling out a class for special treatment.

CONCLUSION

Petitioner respectfully urges this Court to grant his Petition for Rehearing and to reverse the ruling of the District Court below, to the effect that Petitioner need not register under OSORA.

Respectfully submitted,

JAMES ALEXANDER DRUMMOND, OBA #2504
Jim Drummond Law Firm, PLC
220 ½ East Main Street, Suite 2
Norman, Oklahoma 73069-1353
405.310.4040; Fax 405.310.4041
Jim@jimdrummondlaw.com

CERTIFICATE OF MAILING TO ALL PARTIES AND COURT CLERK

I hereby certify that a true and correct copy of the Petition for Rehearing was mailed this 6th day of September, 2011, to Larry Foster, II, Assistant General Counsel, Oklahoma Department of Corrections, 3400 Martin Luther King Avenue, Oklahoma City, Oklahoma 73111, by depositing it in the U.S. Mails, postage prepaid.

I further certify that the original and 10 copies of the Petition for Certiorari were filed in the Office of the Court Clerk of the Supreme Court on the 6th day of September, 2011.

JAMES ALEXANDER DRUMMOND

APPENDIX
OPINION TO WHICH CERTIORARI IS SOUGHT