

IN THE INDIANA COURT OF APPEALS
CAUSE NO. 05A02-0707-CR-640

FILED
OCT 29 2007
CLERK OF THE
INDIANA SUPREME COURT
AND APPELLATE COURT

STATE OF INDIANA)	Appeal from the Blackford Superior Court
Plaintiff/Appellant)	
V.)	Trial Court Case No. 05D01-0701-FD-047
ANTHONY W. POLLARD)	The Honorable John W. Forcum
Defendant/Appellee)	

APPELLEE'S BRIEF

Chris M. Teagle #2278-18
Attorney for Defendant/Appellee
400 N. High Street, Suite 200
Muncie, IN 47305
Telephone: 765-287-0881
Facsimile: 7654-289-1014

IN THE INDIANA COURT OF APPEALS
CAUSE NO. 05A02-0707-CR-640A

STATE OF INDIANA)
Plaintiff/Appellant)

V.)

ANTHONY W. POLLARD)
Defendant/Appellee)

Appeal from the Blackford Superior Court

Trial Court Case No. 05D01-0701-FD-047

The Honorable John W. Forcum

APPELLEE'S BRIEF

Chris M. Teagle #2278-18
Attorney for Defendant/Appellee
400 N. High Street, Suite 200
Muncie, IN 47305
Telephone: 765-287-0881
Facsimile: 7654-289-1014

TABLE OF CONTENTS

Statement of the Issue 1

Statement of the Case..... 1

Statement of the Facts 1

Summary of the Argument..... 1

Argument 2

Conclusion 3

Certificate of Service 4

TABLE OF AUTHORITIES

Cases

<i>Cart vs. State of Indiana</i> , 561 N.E.2d 759, 765 (Ind.1990).....	2
<i>Clem vs. Christole</i> , 582 N.E.2d 780 (Ind. 1991).....	2
<i>Conner vs. State</i> , 626 N.E.2d 803 (Ind. 1993).....	2
<i>Spencer vs. O'Connor</i> , 707 N.E.2d 1039 (Ind.Ct.App. 1999).....	3
<i>State vs. Moss-Dwyer</i> , 686 N.E.2d 109 (Ind.1997).....	2
<i>Teer vs. State</i> , 738 N.E.2d 283 (Ind.Ct.App. 2000).....	3

Statutes

Indiana Code, Section 35-42-4-11.....	1,2,3
Indiana Code, Section 35-47-2-3.....	2
Indiana Code, Section 35-38-4-6.....	2

Constitutional Provisions

Indiana Constitution, Article 1, Section 24.....	1,2
--	-----

**IN THE INDIANA COURT OF APPEALS
CAUSE NO. 05A02-0707-CR-640A**

STATE OF INDIANA)	Appeal from the Blackford Superior Court
Plaintiff/Appellant)	
)	
V.)	Trial Court Case No. 05D01-0701-FD-047
)	
)	
ANTHONY W. POLLARD)	The Honorable John W. Forcum
Defendant/Appellee)	

APPELLEE'S BRIEF

STATEMENT OF THE ISSUE

1. Whether the Trial Court erred in finding Indiana Code, Section 35-42-4-11 unconstitutional as applied to the facts of this case?

STATEMENT OF THE CASE

The Defendant agrees with the Appellant's Statement of the Case.

STATEMENT OF THE FACTS

The Appellee agrees with the Statement of the Stipulated Facts as set forth by the Appellant in the Appellant's Brief.

SUMMARY OF THE ARGUMENT

Indiana Code, Section 35-42-4-11 does violate Article 1, Section 24 of the Indiana State Constitution as applied to the Defendant, Anthony Pollard (hereinafter referred to as "Pollard") as found by the Trial Court herein. The Trial Court specifically found in its decision that the statute is not unconstitutional in all applications but it is unconstitutional as applied to the Defendant/Appellee, Anthony Pollard.

ARGUMENT

Indiana Code, Section 35-42-4-11 does violate the Indiana Constitution as applied to the Defendant herein. The Indiana Supreme Court in State vs. Moss-Dwyer, 686 N.E.2d 109 (Ind.1997) found that the Trial Court erred when it found Indiana Code 35-47-2-3 to be unconstitutional on its face. However, the Moss case is distinguishable from the case at bar as the trial court herein found the statute to be unconstitutional as applied to Pollard. The case at bar is similar to Conner vs. State, 626 N.E.2d 803 (Ind. 1993), wherein the Indiana Supreme Court held that Indiana Code 35-48-4-46 was unconstitutional as applied to the Defendant in that particular case but not unconstitutional on its face. In doing so, the Indiana Supreme Court stated as follows: "It is possible for the statute under which appellant is convicted to be constitutional, and yet be unconstitutional as applied to appellant in this particular case" Id @ p. 6 citing Cart vs. State of Indiana, 561 N.E.2d 759, 765 (Ind.1990). This is what has transpired in the case at bar in that the Trial Court herein did not find that Indiana Code 35-42-4-11 was unconstitutional on its face but rather determined that the statute was unconstitutional as applied to Pollard.


Article 1, Section 24 of the Indiana Constitution particularly provides as follows:
No ex post facto law, or law impairing the obligations of contract, shall ever be passed.
The founders of the constitution could not have been more clear in their prohibition of certain types of legislation. As acknowledged by the State in the Appellant's Brief, in the case of Clem vs. Christole, 582 N.E.2d 780 (Ind. 1991) the Indiana Supreme Court held that the statute at issue in that matter was unconstitutional pursuant to Article 1, Section 24. As noted above, the Trial Court herein specifically found that the statute as applied to Pollard, who had owned his residence at issue for a period in excess of 20 years and resided in the house as well, was unconstitutional as it impaired his contractual ownership rights. Obviously a person's ownership

rights include the right to reside in his/her home. To enforce the statute against Pollard would require him to incur the cost of obtaining other housing and relocating his residence. Clearly, this would impair his contractual interest in the home. Like the Christole case, this would cause an irrevocable change in Pollard's ownership rights as to his residence.

Also, the statute herein as applied to Pollard does constitute an ex post facto law. Neither of the cases cited by the State of Indiana are controlling herein. First of all, in Spencer vs. O'Connor, 707 N.E.2d 1039 (Ind.Ct.App. 1999) the issue was whether or not the required registry of a sex offender was punishment. The Court of Appeals determined that such registry was not punishment. However, in the case at bar, the Trial Judge determined that the imposition of a negative effect on Pollard's ownership interest was additional punishment that he was not subjected to at the time he entered his plea to the underlying charge. Further, in Teer vs. State, 738 N.E.2d 283 (Ind.Ct.App. 2000) the Court found that it was not an ex post facto violation because the Defendant was merely subjected to the enhancement of his sentence for a new crime as the result of his possession of a handgun and was not being exposed to additional punishment for the original offense. Therefore, Teer is inapplicable to the case at bar as the case at bar does not deal with the enhancement of a sentence for a new offense.

CONCLUSION

For the reasons set forth herein, the Trial Judge was correct that Indiana Code 35-42-4-11 is unconstitutional as applied to Pollard and the Trial Court's Judgment should be affirmed.

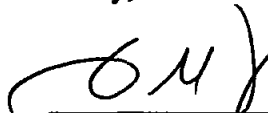

Chris M. Teagle #2278-18
Attorney for Appellant/Defendant
400 N. High Street, Suite 200
Muncie, IN 47305
Telephone: 765-287-0881
Facsimile: 7654-289-1014

CERTIFICATE OF SERVICE

This hereby certifies that a true and accurate copy of the foregoing had been served upon the following by deposit in First Class United States Mail, this the 29th day of Oct., 2007:

Attorney General
302 W. Washington Street
Indianapolis, IN 46204

Blackford County Prosecutor
PO Box 28
Hartford City, IN 47348



Chris M. Teagle