Touro Law Review

Volume 13 | Number 3 Article 24

1997

Ex Post Facto Laws: Supreme Court New York County People v. Griffin (decided December 5, 1996

U.S. CONST. art. I, § 9:

No Bill of Attainder or ex post facto Law shall be passed.

U.S. CONST. art. I, § 10:

No State shall . . . pass any Bill of Attainder, ex post facto Law or Law impairing the Obligation of Contracts . . . .

SUPREME COURT

NEW YORK COUNTY

People v. Griffin[1]
(decided December 5, 1996)

Defendant, Patrick Griffin, was convicted of sodomy and falsifying business records, and was released on bail pending his sentence.[2] He was eventually sentenced to concurrent prison terms of three and one-third to ten years and one and one-third to four years.[3] Pending defendant's appeal, the Appellate Division, First Department, stayed the execution of the judgment.[4] After the stay was issued, the lower court raised issue in this case regarding its failure to certify the defendant as a sex offender pursuant to the Sex Offender Registration Act (hereinafter "SORA").[5] Defendant claimed that the court was deprived of jurisdiction to certify him as a sex offender because SORA is an

1. 652 N.Y.S.2d 922 (1996).
2. *Id.* at 923.
3. *Id.*
4. *Id.*
5. *Id. See* Corr. L. §§ 168 et seq. [L.1995, c. 192 §3 (effective Jan. 21, 1996)]) which states in pertinent part: "Upon conviction the court shall certify that the person is a sex offender and shall include the certification in the order of commitment."

unconstitutional ex-post facto law as applied to him.[6] The supreme court held that defendant did not meet his burden of proving beyond a reasonable doubt that the certification provisions of SORA violated the ex-post facto clause of the Federal Constitution.[7]

SORA is a New York State statute that was passed in order to protect the public from sex offender recidivism and enhance the information available to law enforcement authorities and the general public so that apprehension and prosecution of sex offenders could be more effective.[8] The statute requires that all convicted sex offenders be classified according to their level of risk of recidivism, and that they register with governmental authorities prior to their release from incarceration.[9] One of the sections of the statute requires the court to certify that the person is a sex offender, and to include the certification in the order of commitment.[10] Defendant argued SORA, in its entirety, violated the prohibition against ex-post facto laws.[11] The fact that

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6. U.S. CONST. art. I, § 10. This section provides in pertinent part: "No State shall . . . pass any . . . ex post facto Law . . . ." *Id.*

7. *Griffin*, at 926.

8. *Id.* at 924.

9. *Id.*

10. Corr.L § 168-d(1).

11. *Griffin* at 924. Defendant also argued, alternatively, that the conviction itself constituted compliance with the statutory requirement of certification and the court lacked jurisdiction because the Appellate Division Justice stayed all subsequent actions, and that the court lacked jurisdiction to enter an order in compliance with § 168-d(1) because the enforcement of SORA had been enjoined. *Id.* at 925, 927. First, the supreme court stated that, if a conviction for a sex offense constituted sufficient compliance with the statute, the statute requirement of certification would be without meaning. *Id.* at 925. Second, the court decided that the argument regarding the Appellate Division's order to stay failed for two reasons. *Id.* One reason is that the only portion of the judgment remaining unfinished was the sentence, not the adjudication of guilt. *Id.* That decision is finished when the jury renders its verdict. *Id.* The other reason that defendant's argument fails is that the court has a well-settled power to correct its own records, where the correction relates to inadvertent errors by the court. *Id.* *See* People v. Wright, 56 N.Y.2d 613, 450 N.Y.S.2d 473, 435 N.E.2d 1088 (1982); People v. Minaya, 54 N.Y.2d 360, 364, 445 N.Y.S.2d 690, 692, 429 N.E.2d 1161, 1163 *cert. denied*, 455 U.S. 1024 (1982) (stating that courts can make changes to correct

defendant committed the crime prior to the enactment of SORA was uncontested.[12]

The court analyzed the defendant's ex-post facto argument based on the United States Constitution since the New York State Constitution does not contain a provision regarding ex post facto laws. The court stated that it is a basic tenet of statutory interpretation that a statute should not be set aside as unconstitutional unless such a conclusion is inescapable.[13] The court further stated that a strong presumption in favor of constitutionality of legislative enactments exists, and that the burden rests with the challenger of the statute.[14]

In *Hope v. Perales*,[15] a New York statute failed to include medically necessary abortions in a prenatal care public funding scheme for women with incomes up to a certain percent over the federal poverty level.[16] The court stated in its analysis that the court's role does not include passing upon the wisdom of the legislature, and that a strong presumption in favor of constitutionality exists.[17] The burden rests with the challenger of the statute to prove that the statute is unconstitutional.[18] The

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defects in sentencing orders notwithstanding a statutory prohibition against modification of sentences). In this case since the court inadvertently failed to certify defendant as a sex offender, the court was in a position where it was necessary to correct the error. *Griffin*, at 925. Third, only public notification provisions of SORA have been enjoined, the certification provisions have not been enjoined. *Id.* at 927.

12. *Id.* at 925.

13. *Griffin* at 925, 926.

14. *Id* at 926.

15. 83 N.Y.2d 563, 634 N.E.2d 183, 611 N.Y.S.2d 811 (1994).

16. *Id.* at 571, 634 N.E.2d at 184, 611 N.Y.S.2d at 812. In Hope, plaintiffs commenced the action against the Commissioners of Social Services and Health seeking a preliminary injunction against implementation of New York's Prenatal Care Assistance Program (PCAP) to the extent it does not include funding for medically necessary abortions. *Id.* at 573, 634 N.E.2d at 185, 186, 611 N.Y.S.2d at 813, 814. See N.Y. PUBLIC HEALTH LAW § 2520 *et seq.* (McKinney 1987).

17. *Id.* at 575, 634 N.E.2d at 186, 611 N.Y.S.2d at 814.

18. *Id.* at 574, 634 N.E.2d at 188, 611 N.Y.S.2d at 814.

New York Court of Appeals reversed the Appellate Division's decision and declared the statute unconstitutional.[19]

Applying the rule derived from *Hope v. Perales,* the *Griffin* court concluded that the defendant's argument that SORA was an unconstitutional ex-post facto law must be rejected, since the defendant offered nothing more than a vague, general declaration that SORA violated the U.S. Constitution's provision against ex post facto laws.[20] The court noted, however, that even if the defendant's claim was judged on its merits, the constitutional challenge would nevertheless fail since SORA is not even considered an "ex-post facto law" according to the common law definition.[21]

The court defined ex-post facto laws as laws that "retroactively increase the punishment for criminal acts."[22] In *Collins v. Youngblood*,[23] the U.S. Supreme Court was presented with the question of whether the application of a Texas statute, which was passed after respondent's crime and which allowed the reformation of an improper jury verdict, violated the Ex Post Facto Clause.[24] The Court held that the statute was not unconstitutional since it did not make an act criminal, deprive someone of any of the available defenses or make the punishment more burdensome after the act was committed.[25]

In *Griffin*, the court compared the certification provisions of SORA to the far more burdensome and punitive registration provisions of SORA. The registration provisions require that the sex offenders list information regarding very personal information including a description of the offense for which the sex offender was convicted. This information is to be available to the public and is included on a recording when one dials a 900 number set up for this purpose.[26] The court noted that the

19. *Id.* at 571, 634 N.E.2d at 184, 611 N.Y.S.2d at 812.
20. *Griffin* at 926.
21. *Id.*
22. *Id.*
23. 497 U.S. 37 (1990).
24. *Id.* at 39.
25. *Id. at* 52.
26. Corr.L § 168-b (1995).

registration provisions have been upheld against ex post facto challenges since they do not constitute "punishment" within the meaning of the ex post facto clause.[27] Therefore, the challenge against the less burdensome and punitive certification provisions, the court reasoned, must be rejected.

The New York courts have no state constitutional provision regarding ex post facto laws to follow. Their analysis involves the United States Constitution since Article I, section 10 of the U.S. Constitution dictates how the states will act in regards to ex post facto laws, it specifically mandates that none will be passed. The court, however, in *Griffin* found that the law at issue was not an ex post facto law.[28] Under a federal or state constitutional analysis, ex post facto laws are not allowed. In analyzing whether a law is an ex post facto law, both federal and state courts have answered the question by determining whether the law has a punitive effect, that is, which punishes conduct which, at the time it occurred, was not punishable.[29] The ban applies only to measures which are criminal or penal.[30] However, the dividing line between criminal and civil penalties is not always clear. New York courts and federal courts have held that certification provisions of SORA are not penal in nature, therefore the Griffin court of New York reasoned that the less punitive certification provisions are also not penal, and therefore not ex post facto laws.

27. *Griffin* at 926.
28. *Id.*
29. *Id.*.
30. *Id.*