

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

STATE OF OHIO,	:	APPEAL NO. C-070071
Plaintiff-Appellee,	:	TRIAL NO. B-8404198
vs.	:	
VAUGHN ANESHANSEL,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Vaughn Aneshansel appeals from the judgment of the Hamilton County Court of Common Pleas classifying him as a sexual predator. In 1985, Aneshansel had been convicted of three counts of rape. He was sentenced to an indeterminate term of 10 to 25 years in prison.

In January 2006, Aneshansel was returned to Hamilton County for a sex-offender classification hearing. At the conclusion of the hearing, the trial court found Aneshansel to be a “child victim predator.” Aneshansel appealed the trial court’s classification.² This court concluded that because Aneshansel had not been convicted of a “child victim oriented offense,” but rather a “sexually oriented

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² (Nov. 8, 2006), 1st Dist. No. C-060006.

offense,” he could not be classified as a “child victim predator.” Consequently, we remanded Aneshansel’s case to the trial court for a new classification hearing.³

On January 30, 2007, the trial court held another classification hearing. At the conclusion of the hearing, the trial court found Aneshansel to be a sexual predator. Aneshansel now appeals, raising two assignments of error for our review.

In his first assignment of error, Aneshansel contends that his classification as a sexual predator violates the Ex Post Facto Clause of the United States Constitution and the Retroactivity Clause of the Ohio Constitution.

Aneshansel, however, in his first appeal raised the identical argument, which we rejected on the authority of *State v. Cook*.⁴ Because Aneshansel has already litigated this issue in his prior appeal, he is barred from relitigating it under the doctrine of the law of the case and the doctrine of res judicata.⁵ We, therefore, overrule his first assignment of error.

In his second assignment of error, Aneshansel contends that the evidence failed to establish his likelihood of committing future sexually-oriented offenses, and, thus, that his sexual-predator adjudication was contrary to the manifest weight of the evidence.

To obtain a sexual-predator adjudication, the state must prove by “clear and convincing” evidence that the offender (1) has pleaded guilty to or has been found guilty of a sexually-oriented offense “that is not a registration exempt sexually-oriented

³ Id.

⁴ 83 Ohio St.3d 404, 1998-Ohio-291, 700 N.E.2d 570.

⁵ *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824, at ¶17, quoting *State v. Perry* (1967), 10 Ohio St.2d 175, 226 N.E.2d 104, paragraph nine of the syllabus; see, also, *Weir v. Kebe* (1985), 29 Ohio App.3d 53, 503 N.E.2d 177 (holding that the doctrine of the law of the case provides that a decision of a reviewing court remains the law for that case as to all relevant legal questions in subsequent proceedings both at trial and on appeal, unless the decision achieves an unjust result.).

offense,” and (2) is “likely to engage in the future in one or more sexually-oriented offenses.”⁶ Clear and convincing evidence has been defined as “that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established.”⁷

“In determining whether an offender convicted of a sexually-oriented offense is a sexual predator, the trial court must consider the evidence under the legislative guidelines in R.C. 2950.09(B)(2).⁸ [Citations deleted.] The weight, if any, to be given to the statutory factors is within the trial court’s discretion. [Citations deleted.] In making its findings, the trial court is not required to list the criteria, but is only required to consider all the criteria and guidelines under R.C. 2950.09(B)(2).”⁹

Aneshansel contends that because he had attended sexual-offender programs in prison; he had no prior convictions for sexual offenses apart from the instant offenses; he was found to have a low risk of recidivism on the Static-99 test; and he had managed to stay sober, in a healthy relationship with his fiancée, and gainfully employed for the two years following his release from prison, the evidence failed to establish his likelihood of committing future sexually-oriented offenses.

In adjudicating Aneshansel to be a sexual predator, the trial court found that the statutory factors regarding recidivism essentially outweighed this favorable evidence presented by Aneshansel. The trial court stated that Aneshansel had engaged in both sexual contact and sexual conduct with his five-year-old daughter and his ten-year-old stepdaughter for a lengthy period of time. The trial court noted

⁶ R.C. 2950.01(E)(1); see, also, R.C. 2950.09(C).

⁷ *State v. Eppinger*, 91 Ohio St.3d 158, 163, 2001-Ohio-247, 743 N.E.2d 881, quoting *Cross v. Ledford* (1954), 161 Ohio St. 469, 477, 120 N.E.2d 118.

⁸ *State v. Morales*, 153 Ohio App.3d 635, 2003-Ohio-4200, 795 N.E.2d 145, at ¶8. The statute has been amended since this decision. The guidelines are now listed in R.C. 2950.09(B)(3).

⁹ *Id.*

that Aneshansel had begun abusing his stepdaughter at the age of six by first fondling her private areas, and then engaging in oral sodomy and vaginal and anal intercourse with her. During this same time, Aneshansel had also forced his five-year-old daughter to perform oral sodomy and to give and receive oral sex. Thus, Aneshansel had engaged in a pattern of abuse that had spanned several years, and his victims had been under the age of ten for the majority of that time.

The trial court noted that while Aneshansel had not had any problems in the two years following his release from prison, he did have a criminal record apart from the instant offenses that included juvenile and violent offenses, as well as a lengthy history of substance abuse. The trial court further acknowledged that Aneshansel had obtained a Static 99 score of zero, which placed him in the low-to-moderate range for re-offending, but noted that the court clinic's report provided that his score might have understated his risk for recidivism.

In finding Aneshansel to be a sexual predator, the trial court focused upon a clinical risk assessment from the Chillicothe Correctional Institute, which stated that Aneshansel's "association with children should be taken under advisement," as well as three MMPI tests that were administered in November 2005, December 2005, and January 2007. The trial court stated that Aneshansel's personality profile was similar to individuals who had difficulty controlling their anger, often exhibited poor judgment, acted without considering the consequences of their behavior, and had difficulty learning from their experiences and accepting responsibility for their behavior. Aneshansel's profile further suggested that he had difficulty maintaining interpersonal relationships, that he had problems with family members and persons

in authority, and that he had a “fixed behavioral pattern related to characterological process that is difficult to change.”

The trial court therefore concluded that the MMPI findings and the report from the Chillicothe Correctional Institute, when combined with Aneshansel’s criminal record and history of substance abuse, and the length and nature of the sexual acts Aneshansel had committed against his young victims, outweighed any favorable evidence presented by Aneshansel. Based upon our review of the record, the trial court could have reasonably concluded that there were a number of factors that weighed in favor of Aneshansel’s likelihood to re-offend. Consequently, we cannot say its decision to classify Aneshansel as a sexual predator was against the manifest weight of the evidence. As a result, we overrule Aneshansel’s second assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on December 12, 2007
per order of the Court _____.
Presiding Judge