

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

STATE OF OHIO,	:	APPEAL NO. C-070092
	:	TRIAL NO. B-8304339
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
ARVIL DAVENPORT,	:	
	:	
Defendant-Appellant.	:	

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

In 1984, defendant-appellant Arvil Davenport was convicted of aggravated burglary and two counts of rape, all with firearm specifications. He was also convicted of attempted rape. Davenport was sentenced to 33 to 75 years' incarceration. Davenport had broken into the apartment of a 23-year-old nursing student and at gunpoint had forced her to engage in oral and vaginal sex. Davenport also had attempted to force the victim to submit to anal sex, but he had been unsuccessful. Davenport was returned to Hamilton County in January 2007 for a sexual-offender-classification hearing. The trial court found Davenport to be a sexual predator.

Davenport's sole assignment of error alleges that the trial court's finding that he was a sexual predator was against the manifest weight of the evidence.

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

To designate an offender a sexual predator, the state must prove by clear and convincing evidence that the offender has been convicted of a sexually-oriented offense, and that the offender is likely to engage in the future in another sexually-oriented offense.² Clear and convincing evidence is that measure or degree of proof that will produce in the mind of the trier of facts a firm belief as to the truth of the allegations sought to be established.³

In this case, the trial court considered all the relevant factors⁴ and stated on the record its reasons for finding Davenport to be a sexual predator. The trial court found that (1) testing had revealed Davenport's hostility and antisocial behavior; (2) Davenport had committed numerous sexual offenses and rule violations while in prison, including inducing other inmates to perform acts for sexual gratification, engaging in physical contact with other inmates for the purpose of sexually arousing and gratifying one another, beating and threatening to stab another inmate for refusing to cooperate in sex acts, assaulting and fighting with other inmates, disobeying orders, and refusing to carry out work assignments; (3) the Static-99 test placed Davenport in the high-risk category for reoffending; (4) Davenport had displayed cruelty toward the victim of his offenses; (5) Davenport had used a gun in the commission of the offenses; and (6) Davenport had prior convictions for violent offenses, including two assault convictions.

We hold that the record contains sufficient credible evidence to support the trial court's adjudication of Davenport as a sexual predator. The assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

² See former R.C. 2950.01(E)(1); *State v. Eppinger*, 91 Ohio St.3d 158, 2001-Ohio-247, 743 N.E.2d 881.

³ See *Cross v. Ledford* (1954), 161 Ohio St. 469, 120 N.E.2d 118.

⁴ See former R.C. 2950.09(B)(3).

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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.

PAINTER, P.J., HILDEBRANDT and WINKLER, JJ.

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

To the Clerk:

Enter upon the Journal of the Court on January 30, 2008
per order of the Court _____.

Presiding Judge