

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

STATE OF OHIO,	:	APPEAL NO. C-120072
Plaintiff-Appellee,	:	TRIAL NO. B-8304635
vs.	:	
WILLIAM JENKINS,	:	<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. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant William Jenkins appeals from the judgment of the Hamilton County Common Pleas Court classifying him as a sexual predator. In 1984, Jenkins pleaded no contest to and the trial court found him guilty of two counts of rape and one count of gross sexual imposition. The trial court sentenced Jenkins to an aggregate indefinite prison term of five to 25 years in prison. In January 2012, Jenkins was returned to Hamilton County for a sex-offender-classification hearing.

At the classification hearing, the parties stipulated to a court clinic report prepared by Dr. Charles Lee. The court heard argument from Jenkins's counsel and the state. At the conclusion of the hearing, the trial court found Jenkins to be a sexual predator. Jenkins now appeals raising one assignment of error.

In his sole assignment of error, Jenkins argues that his sexual-predator adjudication was supported by insufficient evidence and was contrary to the weight of the evidence.

Both Jenkins and the state argue that this court should apply the “some competent credible evidence” standard of review, articulated in *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), and adopted by the Ohio Supreme Court in *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 32. But the Supreme Court recently clarified that the *Wilson* court was concerned only with “the review of a trial court’s factual findings relating to sexual-offender classifications and whether the proceedings themselves were civil or criminal.” See *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 16. Consequently, it rejected the notion that the *Wilson* court had expressly adopted the *C.E. Morris* standard when reviewing the manifest weight of the evidence in civil cases. *Id.*

The Supreme Court held that because the *C.E. Morris* standard improperly blurs distinctions between weight and sufficiency of the evidence in civil proceedings, appellate courts must apply the standard of review articulated in *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997) when reviewing challenges to the manifest weight of the evidence in civil cases. *Id.* at ¶ 14-23.

Based upon our review of the record, we conclude that the trial court had sufficient evidentiary material before it to produce a firm belief that Jenkins was likely to commit another sexual offense. The state presented evidence that Jenkins had delinquency adjudications for gross sexual imposition in 1974 and sexual imposition in 1977, as well as adult convictions for robbery and aggravated burglary. While Jenkins was incarcerated for the aggravated burglary, he set a fire and was

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charged with aggravated arson. He also committed rape and gross sexual imposition against a male inmate. On his Static 99 and Static 99R assessments, Jenkins measured in the high-risk category for sexual recidivism. Consequently, the trial court could have properly found by clear and convincing evidence that he is a sexual predator. *See State v. Eppinger*, 91 Ohio St.3d 158, 163, 743 N.E.2d 881 (2001), quoting *Cross v. Ledford*, 161 Ohio St. 469, 477, 120 N.E.2d 118 (1954).

Moreover, after reviewing the evidence, all reasonable inferences, and the credibility of the witnesses, we cannot conclude that the trial court lost its way and created such a manifest miscarriage of justice that we must reverse its decision and order a new trial. *See Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541. We, therefore, overrule Jenkins's sole assignment of error and affirm the judgment of the trial court.

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

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

To the clerk:

Enter upon the journal of the court on October 31, 2012

per order of the court _____.

Presiding Judge