

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

STATE OF OHIO,	:	APPEAL NO. C-150077
Plaintiff-Appellee,	:	TRIAL NO. B-1106971
vs.	:	<i>JUDGMENT ENTRY.</i>
RICHARD TOMKINS,	:	
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.

In 2012, defendant-appellant Richard Tomkins pled guilty to eight counts of rape and six counts of unlawful sexual conduct with a minor. The charges stemmed from his molestation of two boys over a period of about eight years. The trial court sentenced him to four years in prison and classified him as a Tier II sex offender.

In 2014, the trial court ordered Tomkins to be returned for a sex-offender-classification hearing pursuant to former R.C. Chapter 2950, known as “Megan’s Law,” because he had committed his sexually-oriented offenses before January 1, 2008. *See State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, ¶ 22. Following the hearing, the court classified Tomkins as a sexual predator.

In two assignments of error, Tomkins argues that his sexual-predator classification was against the weight of the evidence, and that the trial court did not

properly articulate its reasons for the classification. We address the assignments together.

The trial court conducted the reclassification hearing in accordance with the procedure set forth in *State v. Eppinger*, 91 Ohio St.3d 158, 743 N.E.2d 881 (2001). Hamilton County Sheriff's Deputy Mark Bohan testified that Tomkins admitted that his molestation of the boys had begun when they were very young. According to Bohan, the abuse began in 2000, when the boys were eight years old, and continued through 2007. Tomkins claimed that the abuse consisted mainly of his performing oral sex on the boys, and that at times, they touched his penis. In addition, Tomkins took pictures of the boys. Tomkins said that he would buy gifts for the boys.

A search of Tomkins' residence revealed computers that contained child pornography. Tomkins explained to Bohan that he would "use the child pornography so that he would not go out to offend other kids. That was his way of trying to repress his feelings. So he would not go out and find more victims." Tomkins admitted that he had been convicted of a sexual offense in another state for engaging in oral sex with a boy.

Stuart W. Bassman, Ed.D., testified that Tomkins was a pedophile. Bassman stated that, while a Static-99 instrument had revealed Tomkins to be at a low risk of reoffending due to his age (72), Tomkins had demonstrated that he had dynamic risks to reoffend. Some of these risks included Tomkins' emotional identification with preadolescents, his need for a stronger social support system, his need for a greater victim awareness and empathy, his need for treatment to address his overuse of denial, and his history of indulging his attraction to minors through sexual fantasy. Dr. Bassman emphasized the importance of at least seven years of treatment for Tomkins "to learn to strengthen his resolve to not hurt any other children." He acknowledged that until Tomkins was able to address and resolve the "dynamics underlying and contributing to the offending, * * * he is seen at a risk to re-offend and in need of careful

supervision so that he is not in unsupervised contact with minors or others vulnerable to sexual exploitation.”

Carla Dreyer, Psy.D., testified that she had evaluated Tomkins and concluded that he was a pedophile. She said that individuals with pedophilia are typically at a much higher risk of reoffending than the general population. Despite the static instruments’ suggestion that Tomkins was in a low to “moderate-high” range for reoffending, she noted the limitations of those measures. In her opinion, Tomkins presented a risk for sexual reoffending. She reported that the most significant concern was his long-standing attraction to prepubescent males and his history of acting on the attraction. She acknowledged that research has shown that recidivism risks typically decrease as an offender ages, but noted that Tomkins had continued to offend when he was 65 years old.

According to Dr. Dreyer, Tomkins reported that he was not in sex-offender treatment while in prison, and that despite his history, “he does not believe he needs treatment at this time.”

At the conclusion of the hearing, the reports by Drs. Bassman and Dreyer were admitted into evidence. Defense counsel acknowledged that both psychologists had diagnosed Tomkins as a pedophile, but asked the court to find that he was at a low risk of reoffending.

The state argued that under the statutory factors in former R.C. 2950.09, Tomkins had a prior conviction for a sexual offense; that his victims had been eight years old at the start of the molestation; that he had had multiple victims; that he had not engaged in sex-offender treatment for the current offenses; that despite having had treatment for the earlier offense, he continued to reoffend for years; that he had been diagnosed as a pedophile; that he had demonstrated a longstanding pattern of abuse wherein he had targeted and groomed his young victims; and that he had engaged in a

great deal of manipulative behavior in his role as somewhat of a father figure to the boys.

Following its consideration of the testimony, the evidence, and the arguments by counsel, the trial court indicated that it concurred with the state's recitation. The court determined that Tomkins was likely to engage in sexually-oriented offenses in the future based upon his long-standing history of sexual offending.

Accordingly, we hold that the record before us adequately permitted a meaningful review of the sexual-predator classification. *See State v. Allen*, 1st Dist. Hamilton Nos. C-050010 and C-050011, 2006-Ohio-2338, ¶ 51; *State v. Clay*, 177 Ohio App.3d 78, 2008-Ohio-2980, 893 N.E.2d 909, ¶ 38 (1st Dist.). Moreover, we hold that the trial court had ample evidence before it to conclude that Tomkins was likely to engage in one or more sexually-oriented offenses in the future and was therefore a sexual predator. Former R.C. 2950.01(E); *see Eppinger*, 91 Ohio St.3d at 163-164, 743 N.E.2d 881. Thus, we hold that the trial court did not lose its way and create such a manifest miscarriage of justice that we must reverse its decision and order a new classification hearing. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *State v. Williams*, 1st Dist. Hamilton No. C-140199, 2015-Ohio-3968, ¶ 48. We overrule the assignments of error and affirm the judgment of the trial court.

Further, 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.

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

To the clerk:

Enter upon the journal of the court on November 25, 2015
per order of the court _____.
Presiding Judge