

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

|                       |   |                        |
|-----------------------|---|------------------------|
| DAVID MCDANIEL,       | : | APPEAL NO. C-150308    |
|                       | : | TRIAL NO. SP-140007    |
| Petitioner-Appellant, | : |                        |
|                       | : | <i>JUDGMENT ENTRY.</i> |
| vs.                   | : |                        |
| STATE OF OHIO,        | : |                        |
|                       | : |                        |
| Respondent-Appellee.  | : |                        |

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); Loc.R. 11.1.1.

In December 2001, petitioner-appellant David McDaniel was convicted in West Virginia of a sexually-oriented offense that was substantially equivalent to the Ohio offense of gross sexual imposition under R.C. 2907.05. Under West Virginia law, he had a lifetime duty to register as sex offender. After moving to Ohio, he filed a motion for reclassification under former R.C. 2950.09(F), in which he argued that his history and circumstances did not warrant a sexual-predator classification. After a hearing, the trial court overruled the motion.

In his sole assignment of error, McDaniel contends that the trial court erred in overruling his motion for reclassification. He argues the record does not support a finding that he is likely to commit a sexually-oriented offense in the future. This assignment of error is not well taken.

The record shows that trial court considered the factors listed in former R.C. 2950.09(B). *See State v. Eppinger*, 91 Ohio St.3d 158, 166, 743 N.E.2d 881 (2001). The determination of the weight to be given to the individual factors lies within the trial court's discretion. *State v. Thompson*, 92 Ohio St.3d 584, 752 N.E.2d 276 (2001), paragraph one of the syllabus.

The court based its decision on factors other than the facts of the underlying sexually-oriented offense, including McDaniel's failure to participate in substance-abuse and sex-offender treatment. It also found that McDaniel was not credible and that he minimized his responsibility for the original offense. As the finder of fact, the trial court was in the best position to determine credibility. *See State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 24; *State v. Wolfe*, 1st Dist. Hamilton No. C-060428, 2007-Ohio-3088, ¶ 8.

The trial court held that McDaniel had failed to meet his burden to show by clear and convincing evidence that he was unlikely to commit a sexually-oriented offense in the future, which was a fact-based determination. *See Logue v. Leis*, 169 Ohio App.3d 356, 2006-Ohio-5597, 862 N.E.2d 900, ¶ 4 (1st Dist.); *State v. Pasqua*, 157 Ohio App.3d 427, 2004-Ohio-2992, 811 N.E.2d 601, ¶ 24 (1st Dist.). We cannot hold that the trial court's decision was against the manifest weight of the evidence. *See Wilson* at ¶ 24; *Wolfe* at ¶ 8. Consequently, we overrule McDaniel's sole assignment of error and affirm the trial court's judgment.

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

**FISCHER, P.J., MOCK and STAUTBERG, JJ.**

**OHIO FIRST DISTRICT COURT OF APPEALS**

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To the clerk:

Enter upon the journal of the court on April 13, 2016  
per order of the court \_\_\_\_\_.  
Presiding Judge