

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

STATE OF OHIO,	:	APPEAL NO. C-060963
	:	TRIAL NO. B-0507641
Plaintiff-Appellee,	:	
	:	<i>OPINION.</i>
vs.	:	
TINNAGEE SNOW,	:	
	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: November 30, 2007

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Paula E. Adams*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Roger W. Kirk, for Defendant-Appellant.

Note: We have removed this case from the accelerated calendar.

CUNNINGHAM, Judge.

{¶1} Raising two assignments of error, defendant-appellant Tinnagee Snow appeals from the trial court's November 3, 2006, entry adjudicating him a sexual predator following a classification hearing. Snow's classification as a sexual predator stemmed from his plea of guilty to one count of unlawful sexual conduct with a minor.¹ The 18-year-old Snow admitted to having had intercourse with a female co-worker who was under 16 years of age. The trial court accepted his guilty plea, imposed a sentence of one year's imprisonment, and adjudicated Snow a child-victim predator.²

{¶2} In the appeal numbered C-050974, this court reversed the child-victim-predator adjudication and remanded the case to the trial court for a new classification hearing. At the November 3, 2006, hearing, both parties stipulated to a written evaluation of Snow prepared by a court-appointed clinical psychologist. Snow, having been released from prison, testified that he was gainfully employed and was scheduled to attend a sexually-oriented-offense treatment program that was to begin five days after the date of the hearing.

{¶3} Following the classification hearing, the trial court reviewed the factors identified in R.C. 2950.09(B) and found that Snow had a history of substance abuse, employment instability, and rule violations, that Snow had had intercourse with an underage female, and that as a juvenile he had been adjudicated delinquent for attempted gross sexual imposition involving a nine-year-old child. The trial court also noted that Snow's score on a Static-99 test indicated a moderate-to-high risk of recidivism and that the court-appointed psychologist indicated that Snow had dismissed the seriousness of his prior gross-sexual-imposition offense and of the current offense.

¹ See R.C. 2907.04(A).

² See R.C. 2950.01(S)(1)(a)(i).

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{¶4} In his first assignment of error, Snow challenges the weight of the evidence adduced to support the trial court’s adjudication that Snow is a sexual predator. We are persuaded that the trial court had ample evidentiary material before it to produce a firm belief or conviction that Snow “was likely to engage in one or more sexually oriented offenses sometime in the future.”³ Consequently, the trial court’s determination that Snow is a sexual predator was supported by competent, credible evidence and will not be reversed.⁴ The assignment of error is overruled.

{¶5} In his second assignment of error, Snow contends that Ohio’s sexual-predator adjudicatory scheme, found in R.C. Chapter 2950, is unconstitutional under *Blakely v. Washington*⁵ because the scheme permits the imposition of an additional criminal sentence upon factual findings made by only a judge and not made by a jury or admitted by a defendant. Since Snow’s adjudication as a sexual predator was based solely upon the trial court’s detailed factual findings, he argues that the adjudication “constitutes a sentence and additional potential penalties” imposed in violation of the Sixth Amendment to the federal constitution.⁶

{¶6} But “R.C. Chapter 2950 is neither ‘criminal,’ nor a statute that inflicts punishment.”⁷ A sexual-predator proceeding is civil and remedial in nature.⁸ Therefore, the Sixth Amendment rights that an accused would enjoy “[i]n all criminal prosecutions”

³ R.C. 2950.01(E)(1); see, also, *State v. Eppinger*, 91 Ohio St.3d 158, 162, 2001-Ohio-247, 743 N.E.2d 881.

⁴ See *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, syllabus; see, also, *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 368, 481 N.E.2d 613.

⁵ (2004), 542 U.S. 296, 124 S.Ct. 2531; see, also, *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

⁶ Appellant’s Brief at 5.

⁷ *State v. Williams*, 88 Ohio St.3d 513, 528, 2000-Ohio-428, 728 N.E.2d 342; see, also, *State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291, 700 N.E.2d 570.

⁸ See *State v. Gowdy*, 88 Ohio St.3d 387, 2000-Ohio-355, 727 N.E.2d 579.

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do not attach to a sexual-predator hearing.⁹ Judicial fact-finding made pursuant to R.C. Chapter 2950 does not run afoul of *Blakely's* proscription against “imposing a sentence greater than that allowed by the jury verdict or by the [accused’s] admissions at a plea hearing.”¹⁰ The second assignment of error is overruled.

{¶7} Therefore, the trial court’s sexual-predator adjudication is affirmed.

Judgment affirmed.

SUNDERMANN, P.J., and HENDON, J., concur.

Please Note:

The court has recorded its own entry on the date of the release of this opinion.

⁹ Sixth Amendment to the United States Constitution; see, also, *Goldfuss v. Davidson*, 79 Ohio St. 3d 116, 126, 1997-Ohio-401, 679 N.E.2d 1099; *State v. Hall* (Oct. 10, 1997), 1st Dist. No. C-960772.

¹⁰ *State v. Foster* at ¶7; see *State v. Bursey*, 8th Dist. No. 88924, 2007-Ohio-4847, at ¶18.