

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 04AP-1168 (C.P.C. No. 04CR-01-268)
Ronald C. Gross,	:	No. 04AP-1169 (C.P.C. No. 04CR-02-1362)
Defendant-Appellant.	:	(REGULAR CALENDAR)

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D E C I S I O N

Rendered on August 2, 2005

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*Ron O'Brien*, Prosecuting Attorney, and *Richard Termuhlen, II*, for appellee.

*Andrew P. Avellano*, for appellant.

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APPEALS from the Franklin County Court of Common Pleas.

BRYANT, J.

{¶1} Defendant-appellant, Ronald C. Gross, appeals from judgments of the Franklin County Court of Common Pleas that (1) convicted him of one count of importuning in violation of R.C. 2907.07, and one count of attempted kidnapping in violation of R.C. 2923.02 as it relates to R.C. 2905.01, and (2) concluded defendant is a sexually violent predator, resulting in a sentence of 18 months of incarceration on the

importuning conviction, to be served concurrently with seven years to life on the attempted kidnapping charge.

{¶2} Defendant appeals, assigning the following error:

The trial court committed reversible error when it found Appellant to be a sexually-violent predator, in contradiction to R.C. 2971.01(H)(1).

Because the trial court erred in concluding defendant is a sexually violent predator, we reverse.

{¶3} R.C. 2971.01(H)(1) provides that a "sexually violent predator" means a person who has been convicted of or pleaded guilty to committing, on or after January 1, 1997, a sexually violent offense and is likely to engage in the future in one or more sexually violent offenses.

{¶4} Defendant argues, and the state properly concedes, that the Ohio Supreme Court's recent decision in *State v. Smith*, 104 Ohio St.3d 106, 2004-Ohio-6238, applies to these facts. In that case, the court held as syllabus law that "[c]onviction of a sexually violent offense cannot support the specification that the offender is a sexually violent predator as defined in R.C. 2971.01(H)(1) if the conduct leading to the conviction and the sexually violent predator specification are charged in the same indictment." In *Smith*, the court additionally emphasized that a sexually violent predator is defined as a person who has been convicted of or pleaded guilty to committing a sexually violent offense "on or after January 1, 1997." *Id.* at ¶8.

{¶5} Here, although defendant was on parole for a prior sexually violent offense, his prior conviction did not occur on or after January 1, 1997. Moreover, because his designation as a sexually violent offender was premised entirely on the charge in his

indictment, and not on a prior sexually violent offense that occurred on or after January 1, 1997, the portion of the trial court's judgment relating to his designation as a sexually violent predator must be reversed. Defendant's single assignment of error is sustained.

{¶6} Having sustained defendant's single assignment of error, we reverse that part of the trial court's judgment relating to the court's determination that defendant is a sexually violent predator, and we remand this case for re-sentencing.

*Judgment reversed in part;  
case remanded for re-sentencing.*

BROWN, P.J., and KLATT, J., concur.

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