

[Cite as *State v. Holland*, 2004-Ohio-537.]

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
AUGLAIZE COUNTY**

STATE OF OHIO

CASE NUMBER 2-03-27

PLAINTIFF-APPELLEE

v.

O P I N I O N

SCOTT L. HOLLAND

DEFENDANT-APPELLANT

CHARACTER OF PROCEEDINGS: Criminal Appeal from Common Pleas Court.

JUDGMENT: Judgment affirmed.

DATE OF JUDGMENT ENTRY: February 9, 2004

ATTORNEYS:

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For Appellee.**

BRYANT, J.

{¶1} Defendant-appellant Scott L. Holland (“Holland”) brings this appeal from the judgment of the Court of Common Pleas of Auglaize County finding Holland to be a sexual predator.

{¶2} In 1993, Holland was convicted of attempted felonious assault and gross sexual imposition. Holland’s scheduled release date from prison was in October of 2003. On July 18, 2003, a hearing was held to determine whether Holland should be classified as a sexual predator. Prior to the hearing, Holland was examined by a psychologist at the Forensic Psychiatry Center for Western Ohio and a report was introduced as evidence. The trial Court found that Holland had been convicted of a sexually oriented offense and that he was likely to reoffend. Thus, the trial court ruled that Holland was a sexual predator. It is from this judgment that Holland appeals and raises the following assignment of error.

The evidence adduced at hearing (sic) on sexual predator classification by the [State] failed to prove, by clear and convincing evidence, that [Holland] is likely to engage in the future in one or more sexually oriented offenses thus rendering the court’s decision against the manifest weight of the evidence.

{¶3} The sole assignment of error alleges that the finding that Holland is a sexual predator is against the manifest weight of the evidence.

Weight of the evidence concerns ‘the inclination of the *greater amount of credible evidence*, offered in a trial to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall

find the *greater amount of credible evidence* sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its *effect in inducing belief.*'

State v. Thompkins (1997), 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (citing Black's Law Dictionary [6 Ed.1990] 1594). The fact-finder's verdict must be granted due deference as it is in a better position to determine credibility of the witnesses. *State v. Thompson* (1998), 127 Ohio App.3d 511, 713 N.E.2d 456.

{¶4} In this case, the evidence before the trial court was the psychiatric evaluation completed June 19, 2003, the victim impact statement, the original pre-sentence investigation, and the testimony of Holland. After a review of this evidence, the trial court made the following findings.

The Court notes that the sexually oriented offense which sentence was imposed did not involve multiple victims; That the Defendant did not use drugs or alcohol to impair his victim. Court notes that the Defendant has not had sexually oriented programs for sexual offenders available to him for some of his incarceration and notes his participation as he has testified.

The Court notes the mental illness that has been set forth in the evaluation and/or the deception as set forth in the evaluation and notes the continued similar testimony and conduct in the courtroom. Court notes that the nature of the Defendant's sexual conduct and interaction in a sexual context with the victim demonstrated violence. There is discrepancy between the victim's version and the Defendant's version. The Court accepts the victim's version.

The Defendant displayed cruelty and made attempts or threats involving cruelty in his violent reaction. The Defendant's behavioral characteristics including the significant violent behavior when his sexual assault was interrupted, including his continued off and on denial, his lack of remorse, his history of violence with other victims including a felonious assault, his reporting of inconsistent and improbable information during

both the interview by the psychologist as well as his testimony in the court described by the psychologist as a form of passive, aggressive, noncooperation and manipulation in the process demonstrate by proof beyond clear and convincing evidence that the Defendant is likely to reoffend.

Court finds him to be a sexual predator. Court noting that the Defendant's prior reporting having been sexually molested as a child over a repeated basis over a prolonged period of time by a Sunday School teacher is also further information in terms of a characteristic of the Defendant having been himself victimized. That further supports an increased risk that he is likely to offend as against others as he has already acted out in a very angry way.

Tr. 55-57. All of these findings are supported by the record. Although the psychiatric report did not specifically find that Holland was likely to reoffend, it also did not specifically find that Holland was unlikely to reoffend. The trial court was left to make this determination based upon the evidence before it. Since the trial court's findings are supported by the evidence, the court cannot say that the finding that Holland is a sexual predator is a manifest miscarriage of justice. The assignment of error is overruled.

{¶5} The judgment of the Court of Common Pleas of Auglaize County is affirmed.

Judgment affirmed.

SHAW, P.J., and CUPP, J., concur.