

STATE OF OHIO)	IN THE COURT OF APPEALS
)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT)	

STATE OF OHIO	C.A. No.	20801
Appellee		
v.		
JAMES R. BOLYARD	APPEAL FROM JUDGMENT	
Appellant	ENTERED IN THE	
	COURT OF COMMON PLEAS	
	COUNTY OF SUMMIT, OHIO	
	CASE No.	CR 84 10 0074

DECISION AND JOURNAL ENTRY

Dated: May 8, 2002

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

WHITMORE, Judge.

{¶1} Appellant James R. Bolyard has appealed the decision of the Summit County Court of Common Pleas that designated him a sexual predator under R.C. 2950.09. This Court affirms.

I

{¶2} In 1984 Appellant pled guilty to two counts of rape in violation of R.C. 2907.02(A)(3), a felony of the first degree. On September 7, 2001, a sexual

predator hearing was held and the trial court adjudicated Appellant a sexual predator. Appellant has appealed the adjudication, asserting one assignment of error.

II

{¶3} Assignment of Error

{¶4} The state did not produce evidence to prove by clear and convincing evidence that [Appellant] is a sexual predator.

{¶5} In his sole assignment of error Appellant has argued that the state did not establish that he is likely to commit a sexually oriented offense in the future. Appellant has asserted that the evidence presented did not show a current or future risk of recidivism.

{¶6} Sexual predator classification is governed by R.C. 2950.01 et seq.. Pursuant to R.C. 2950.01(G)(3)¹, an offender is “adjudicated as being a sexual predator” if :

{¶7} Prior to January 1, 1997, the offender was convicted of or pleaded guilty to, and was sentenced for, a sexually oriented offense, the offender is imprisoned in a state correctional institution on or after January 1, 1997, and the court determines pursuant to [R.C. 2950.09(C)] that the offender is a sexual predator.

Because Appellant was sentenced prior to the effective date of R.C. 2950.09 and

¹ By amendment effective January 1, 2002, this provision was moved to R.C. 2950.01(G)(4). This Court, however, applies the law in effect at the time of Appellant’s sexual predator hearing.

remained imprisoned after the effective date, the trial court was required to proceed under R.C. 2950.09(C). R.C. 2950.09(C) provides:

{¶8} If a person was convicted of or pleaded guilty to a sexually oriented offense prior to January 1, 1997, *** and if, on or after January 1, 1997, the offender is serving a term of imprisonment in a state correctional institution, the department of rehabilitation and correction shall determine whether to recommend that the offender be adjudicated as being a sexual predator. *** [T]he court is not bound by the department’s recommendation, and the court may conduct a hearing to determine whether the offender is a sexual predator.

R.C. 2950.09(C)(1); R.C. 2950.09(C)(2)(a).

{¶9} R.C. 2950.01(E) defines a sexual predator as “a person who has been convicted of or pleaded guilty to committing a sexually oriented offense and is likely to engage in the future in one or more sexually oriented offenses.” Appellant pled guilty to rape, which is a sexually oriented offense. R.C. 2950.01(D)(1). Therefore, the only issue before this Court is whether the trial court’s conclusion that Appellant was likely to engage in the future in a sexually oriented offense is supported by sufficient evidence.

{¶10} In reviewing the trial court’s decision to adjudicate Appellant a sexual predator, “we must examine the record to determine whether sufficient evidence exists to meet the clear and convincing standard.” *State v. McKinney*, 9th Dist. No. 3207-M, 2002-Ohio-86, at 4, citing *Cross v. Ledford* (1954), 161 Ohio St. 469, 477. “[T]he clear-and-convincing-evidence standard require[s] the state to present evidence that would give the court a firm belief or conviction that

[a] defendant [is] likely to commit another sexually oriented offense in the future.” (Alterations sic.) *State v. Williams* (2000), 88 Ohio St.3d 513, 533, quoting *State v. Ward* (1999), 130 Ohio App.3d 551, 569. The clear and convincing evidence standard “is intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal.” *State v. Eppinger* (2001), 91 Ohio St.3d 158, 164, quoting *Cross*, 161 Ohio St. at 477.

{¶11} Appellant has argued that his sexual predator adjudication was against the manifest weight of the evidence. “[T]he same standard [applies] in determining whether a sexual predator adjudication is against the manifest weight of the evidence as in reviewing a criminal conviction.” *State v. Linden* (Feb. 2, 2000), 9th Dist. No. 2984-M, at 3. Therefore, this Court must:

{¶12} [R]eview the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the [adjudication] must be reversed[.]

State v. Otten (1986), 33 Ohio App.3d 339, 340.

{¶13} Appellant has argued that the determination that he is likely to commit a sexually oriented offense in the future is not supported by sufficient evidence. This Court disagrees.

{¶14} In determining whether an offender is likely to engage in one or more sexually oriented offenses in the future, i.e. is a sexual predator, R.C.

2950.09(B)(2) requires the trial court to consider all relevant factors including, but not limited to:

{¶15} (a) The offender's age;

{¶16} (b) The offender's prior criminal record regarding all offenses, including, but not limited to, all sexual offenses;

{¶17} (c) The age of the victim of the sexually oriented offense for which sentence is to be imposed;

{¶18} (d) Whether the sexually oriented offense for which sentence is to be imposed involved multiple victims;

{¶19} (e) Whether the offender used drugs or alcohol to impair the victim of the sexually oriented offense or to prevent the victim from resisting;

{¶20} (f) If the offender previously has been convicted of or pleaded guilty to any criminal offense, whether the offender completed any sentence imposed for the prior offense and, if the prior offense was a sex offense or a sexually oriented offense, whether the offender participated in available programs for sexual offenders;

{¶21} (g) Any mental illness or mental disability of the offender;

{¶22} (h) The nature of the offender's sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;

{¶23} (i) Whether the offender, during the commission of the sexually oriented offense for which sentence is to be imposed, displayed cruelty or made one or more threats of cruelty;

{¶24} (j) Any additional behavioral characteristics that contribute to the offender's conduct.

While the trial court must consider all factors under R.C. 2950.09(B)(2), “[t]he State is not required to demonstrate every factor *** before a defendant can be adjudicated a sexual predator.” *State v. Smith* (June 2, 1999), 9th Dist. No. 18622, at 5. Both parties must be given the opportunity to present new evidence and call and examine witnesses, but the statute does not mandate that evidence subsequent to the underlying event be presented at the sexual predator hearing. R.C. 2950.09(B)(1). The Ohio Rules of Evidence do not strictly apply to sexual predator adjudication hearings. *State v. Cook* (1998), 83 Ohio St.3d 404, 425; See, also, *State v. Steckman* (Feb. 9, 1999), 9th Dist. No. 97CA006996, at 11-12. In making the sexual predator classification, the trial court may use reliable hearsay evidence. *Cook*, 83 Ohio St.3d at 425.

{¶25} Appellant has argued that the state’s presentation of the underlying offense does not establish a likelihood to reoffend. Appellant has claimed that his sexual predator finding was the result of a “rubber-stamp[ing]” process of classifying all convicted sexual offenders as sexual predators. Such a contention is without merit. R.C. 2950.01(G)(3) requires the trial court to determine, after a hearing, if an offender is a sexual predator. Further, R.C. 2950.09(B)(2) enumerates factors for the trial court to consider in determining if an offender is likely to commit future offenses. Sexual predator adjudication requires the trial court to consider all relevant factors, which include the facts and circumstances of the underlying offense. “This Court has consistently required only clear and

convincing evidence, new or previously known, that a sexual offender is likely to commit another sexually oriented offense; the clear and convincing evidence standard does not require the presentation of new evidence at sexual predator hearings.” *State v. Trakas*, 9th Dist. No. 01CA007871, 2002-Ohio-458, at 7; see, also, R.C. 2950.09(B)(1); *Williams*, 88 Ohio St.3d at 533; *State v. Britton* (July 18, 2001), 9th Dist. No. 00CA007723 at 5-6, appeal not allowed (2001), 93 Ohio St.3d 1474; *State v. Smith* (June 2, 1999), 9th Dist. No. 18622 at 5; *State v. Haught* (May 24, 2000), 9th Dist. No. 19762 at 4-5.

{¶26} At the sexual predator hearing, the state called Detective Price, the investigating officer in Appellant’s rape case, as a witness. Using her police reports from Appellant’s underlying conviction, Detective Price testified that Appellant’s victim was his stepdaughter and that the abuse began when the victim was nine years old and continued until she was thirteen years old. Detective Price testified that the abuse occurred consistently on multiple occasions and included vaginal, anal, and oral sexual intercourse. Detective Price also testified that Appellant threatened to punish the victim if she told anyone of the abuse.

{¶27} Appellant testified at the sexual predator hearing and admitted he abused his stepdaughter. Appellant testified that he is a different person from when the abuse occurred. Appellant stated that while incarcerated he has participated in several self-help programs, including sexual offender, anger management, and victim empathy programs. On cross-examination, Appellant

denied abusing his stepdaughter when she was nine. He stated that they did not have intercourse until after she was thirteen and that the abuse did not occur on multiple occasions.

{¶28} Upon the state's motion, Detective Price's police report, the indictment, and the plea agreement were entered into evidence. The state argued that the evidence showed that Appellant was likely to reoffend. The state asserted that Appellant engaged in a pattern of abuse and only accepted partial responsibility for his actions. In making its sexual predator determination, the trial court considered the exhibits, the parties' arguments, Detective Price's testimony, and Appellant's testimony. The trial court found that the state met its burden by clear and convincing evidence.

{¶29} The record verifies that the trial court considered R.C. 2950.09(B)(2) in determining Appellant's classification. Under R.C. 2950.09(B)(2)(a), the trial court cited the offender's age, noting that Appellant was forty years old at the time of his conviction. The trial court found the victim's age relevant under factor (c) because the abuse began when the victim was nine years old and continued until she was thirteen years old. Under factor (h), the trial court noted that the abuse lasted over several years. Under factor (i), the trial court cited Appellant's threats to punish the victim if she told anyone of the abuse.

{¶30} After reviewing and weighing the evidence, this Court cannot conclude that the trial court erred and clearly lost its way when it adjudicated

Appellant a sexual predator. Contrary to Appellant's assertion, sufficient evidence existed to give the trial court a firm belief that that Appellant is likely to commit in the future one or more sexually oriented offenses. Therefore, Appellant's sole assignment of error is overruled.

III

{¶31} Appellant's sole assignment of error is overruled. The judgment of the trial court is affirmed.

Judgment affirmed.

BETH WHITMORE
FOR THE COURT

SLABY, P. J.
BATCHELDER, J.
CONCUR

APPEARANCES:

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