

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellant, :
 : No. 109183
 v. :
 :
 JOHN THOMAS, :
 :
 Defendant-Appellee. :

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: November 12, 2020

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-93-297856-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney and Mary Frey, Assistant Prosecuting Attorney, *for appellant.*

Mark A. Stanton, Cuyahoga County Public Defender, and Cullen Sweeney, Assistant Public Defender, *for appellee.*

MARY EILEEN KILBANE, J.:

{¶ 1} The state of Ohio (“the state”), appeals the trial court’s determination that defendant-appellee, John Thomas (“Thomas”), is not a “child sexual predator.” The trial court made that determination at a sex offender classification hearing

pursuant to R.C. 2950.09, also known as a House Bill 180 hearing. The state and Thomas both agree that the trial court erred and should have made an explicit determination whether Thomas is a “sexual predator” rather than make a determination as to whether he was a “child sexual predator.” As a result, we reverse and remand this decision to the trial court so that the court can make an explicit determination as to whether Thomas is a “sexual predator.”

Procedural History

{¶ 2} On January 24, 1994, John Thomas pled guilty to two counts of rape. He was sentenced to concurrent terms of 5 to 25 years on March 3, 1994.

{¶ 3} On April 11, 1997, Thomas was returned to the trial court for a sex offense classification hearing pursuant to House Bill 180. The trial court granted Thomas’s motion to dismiss the proceedings, finding that the retroactive application of the statute was unconstitutional. The state appealed; we reversed the trial court’s decision and remanded the case to the trial court to “proceed with a sexual offender hearing.” *State v. Thomas*, 8th Dist. Cuyahoga No. 72535, 1999 Ohio App. LEXIS 165, 9 (Jan. 28, 1999).

{¶ 4} On April 15, 1999, the trial court issued an order finding the sex offender classification proceedings “premature.” The court noted that it was required to consider the defendant’s rehabilitative efforts in order to determine his likelihood of committing future offenses. Since Thomas had not been released, the court did not make a determination.

{¶ 5} In 2018, as Thomas neared his October 14, 2018 release date, the state filed a motion seeking a sex offender classification hearing. The trial court held a preliminary hearing on October 11, 2018, and scheduled the classification hearing for January 17, 2019. After several continuances the court held hearings on July 29, 2019, and September 3, 2019.

{¶ 6} The court stated in its findings that it “has the duty to determine if the Defendant is a child-victim predator or not.” After considering the evidence, the court found that “the defendant is not likely to engage in one or more future child-victim oriented offenses. It is HEREBY ORDERED AND ADJUDGED that the Defendant is not a Child-Victim Predator * * *.”

{¶ 7} The state presents a single assignment of error for our review.

Assignment of Error

The Trial Court erred when it determined that Appellee was not likely to engage in one or more future child-victim oriented offenses.

Thomas’s Hearing

{¶ 8} Despite the language of its assignment of error, the state is not arguing that Thomas is a “child-victim predator.” Instead the state is arguing that the court should have made a determination whether Thomas is a “sexual predator.” We agree.

{¶ 9} Former R.C. 2950.01 et seq., codified under H.B. 180 and popularly known as “Megan’s Law,” created three classifications for sexual offenders: sexually

oriented offender, habitual sex offender, and sexual predator. *See* former R.C. 2950.09.

{¶ 10} The sexual predator classification attaches automatically in those cases where an offender is convicted of a violent sexually oriented offense and a specification alleging that he or she is a sexually violent predator. *State v. Cook*, 83 Ohio St.3d 404, 407, 700 N.E.2d 570 (1998), citing former R.C. 2950.09(A). In all other cases of sexually oriented offenders, including this case, the trial court may designate the offender as a sexual predator “only after holding a hearing where the offender is entitled to be represented by counsel, testify, and call and cross-examine witnesses.” *Id.*, citing former R.C. 2950.09(B)(1) and (C)(2).

{¶ 11} A sexual predator is “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.” Former R.C. 2950.01(E).

{¶ 12} After reviewing all of the testimony and considering the relevant factors, “the judge shall determine by clear and convincing evidence whether the offender is a sexual predator.” *State v. Blake-Taylor*, 8th Dist. Cuyahoga No. 100419, 2014-Ohio-3495, ¶ 4, citing former R.C. 2950.09(B)(4).

{¶ 13} In this case, the trial court did not make a determination whether Thomas is a “sexual predator.” Instead the court determined by clear and convincing evidence that Thomas is not a “child-victim predator.” However, Thomas cannot be a “child-victim predator” because he was not convicted of a child-victim-oriented offense.

{¶ 14} In R.C. 2950.091, the General Assembly created a registration provision for “non-sexual offenses against children.” *State v. Gooden*, 8th Dist. Cuyahoga No. 86303, 2006-Ohio-1201, ¶ 3. Child-victim oriented offenses do not involve sex offenses. Child-victim oriented offenses including the following offenses committed against an individual under 18: kidnapping (not to engage in sexual activity), abduction, unlawful restraint, and criminal child enticement. Former R.C. 2950.01(S). Thomas was convicted of a sexual offense.

{¶ 15} Because the trial court erred by making a different determination than is required, we reverse and remand so that the trial court can make a “sexual predator” determination as required by R.C. 2950.09 et al.

{¶ 16} Judgment reversed and remanded.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, JUDGE

PATRICIA ANN BLACKMON, P.J., and
LARRY A. JONES, SR., J., CONCUR