[Cite as *State v. Kuhlman*, 2017-Ohio-1226.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio — Court of Appeals No. L-15-1188

Appellee — Trial Court No. CR0201402988

v.

Jennifer Ann Kuhlman — **DECISION AND JUDGMENT**

Appellant — Decided: March 31, 2017

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Charles R. McDonald, Assistant Prosecuting Attorney, for appellee.

Deborah Kovac Rump, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a June 11, 2015 judgment of the Lucas County Court of Common Pleas, sentencing appellant to a five-year term of community control, community service, mental health treatment, and the associated sexual offender registration requirements resulting from appellant's voluntary plea to two amended

counts of attempted sexual battery, in violation of R.C. 2907.03(A)(7), felonies of the fourth degree.

{¶ 2} This case stems from appellant's multiple acts of sexual intercourse with a student enrolled at the public high school where appellant was employed as a teacher and an assistant coach. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 3} Appellant, Jennifer Kuhlman, sets forth the following two assignments of error:

> I. The decision in *State v. Blankenship* is not dispositive of this case because of the significant factual differences between the two cases. Mandatory sex offender classification under Senate Bill 10 constitute[s] cruel and unusual punishment where the classification is grossly disproportionate to the nature of the offense and character of the offender. This violates the Eighth and Fourteenth amendments to the United States Constitution and Article I, Section 9 of the Ohio Constitution.
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> II. Ohio Revised Code 2907.03(A)(7) and (B) are void for vagueness and violate Kuhlman's right to due process of law. Alternatively, Kuhlman asks this Court [to] apply the Rule of Lenity in her case due to the ambiguity.

{¶ 4} The following undisputed facts are relevant to this appeal. Appellant completed a master's degree in education in 2012. Following graduation, appellant

accepted employment with a Toledo public high school. Appellant's position encompassed both teaching and also serving as an assistant coach for the school's girls' cross-country team.

{¶ 5} While present at the school's track facility in her capacity as a coach employed by the school, appellant met a student who was a member of the school's boy's cross-country and track team. Appellant subsequently commenced a flirtation with the student. Appellant's flirtation with the student quickly transformed into an ongoing sexual relationship lasting several months. Appellant's fervent pursuit of the student culminated in an array of sexual activities between them, including both vaginal and oral intercourse.

{¶ 6} Subsequent to the above described unlawful sexual acts, the student graduated and moved out of town in order to attend college. While away at college, a girlfriend of the victim discovered past Facebook messages between appellant and the victim vividly recounting their sexual activities. Troubled by what she had discovered, the girlfriend submitted the information to police and a criminal investigation of the matter ensued.

{¶ 7} Notably, during the course of the investigation, neither appellant nor the victim denied what had occurred between them. Although the record reflects that appellant does not deny that she engaged in a multitude of per se unlawful sexual acts with a student enrolled at the high school where appellant taught and coached, appellant incorrectly perceives that because the student was 18 years of age at the time and the

multiple acts of sexual intercourse were consensual somehow operates so as to negate the legal consequences of her actions.

{¶ 8} Appellant inexplicably goes to great lengths to portray herself as the victim in this matter. Appellant presents irrelevant and puerile conjecture that she will be improperly perceived as a "pervert" by the parents of her daughter's friends. Appellant self-servingly speculates that there would have been less adverse stigma resulting against her if she had intentionally run the student down in her car versus indulging in an impulsive and illicit sexual affair with him.

{¶ 9} In conjunction with this, appellant goes to great lengths to contend that engaging in consensual sexual intercourse with someone who is 18 years of age is not improper or criminal despite her current employment at the school where the student was actively enrolled. Appellant's subjective objections aside, R.C. 2907.03 clearly says otherwise.

{¶ 10} On December 16, 2014, appellant was indicted on two counts of sexual battery, in violation of R.C. 2907.03(A)(7). On February 9, 2015, appellant was referred to the Court Diagnostic and Treatment Center ("CDTC") to voluntarily undergo a pretrial evaluation. On March 10, 2015, appellant entered a negotiated plea to the lesser offenses of two counts of attempted sexual battery, in violation of R.C. 2907.03(A)(7), felonies of the fourth degree. Appellant was not incarcerated and remained free on a recognizance bond pending sentencing.

{¶ 11} On June 11, 2015, appellant was sentenced to a five-year term of community control, community service, mental health treatment, and the mandatory Tier III sexual offender registration requirements resulting by operation of law from appellant's plea to committing the underlying criminal offenses. This appeal ensued.

{¶ 12} In the first assignment of error, appellant summarily concludes that the sexual offender registration requirements applicable to her as a result of this case are unconstitutional, are cruel and unusual, and are grossly disproportionate to the crimes committed. We do not concur.

{¶ 13} In support of the first assignment, appellant furnishes a litany of assertions that clearly reflect a perception by appellant that she was somehow subjected to allegedly unlawful terms of punishment. The record of evidence belies appellant's position.

{¶ 14} For example, appellant portrays it as constituting some form of prejudicial error that she cannot relocate her residential location without notifying authorities of a change of address. Further, appellant complains that the applicable reporting requirements for her felony criminal convictions impact the range of speculative future employment opportunities. Appellant also immaterially emphasizes that the unlawful conduct was consensual, that the victim was 18 years of age, and that the victim did not want her prosecuted or punished. None of this has any relevance or impact on the consequences of which appellant objects. Appellant concludes, "This is cruel and unusual punishment given the behavior that gave rise to the convictions." We do not concur.

{¶ 15} In assessing appellant's contention that an application of R.C. 2907.03(A)(7) to the conduct underlying this case is unconstitutional, we consider the matter on a de novo basis. *State v. Whites Landing Fisheries*, 6th Dist. Erie No. E-13-021, 2014-Ohio-1314, ¶ 13.

{¶ 16} The strict liability statute underlying this matter, R.C. 2907.03(A)(7), pertaining to the prohibition of sexual conduct between teachers employed by a public school with students simultaneously enrolled at that school, establishes in pertinent part, "No person shall engage in sexual conduct with another, not the spouse of the offender, when * * * the offender is a teacher * * * serving in a school for which the state Board of Education prescribes minimum standards [and] * * * the other person is enrolled in or attends that school."

{¶ 17} The record reflects that while appellant was employed as a teacher and as an assistant track and cross-country coach at a public high school she met a student enrolled at the school who was a member of the boy's track and cross-country team. The record reflects that appellant initiated a flirtation with the student enrolled at her school after meeting him at the school track where appellant was in her capacity as a coach.

{¶ 18} The record reflects that appellant engaged in a several month course of ongoing sexual acts with the student, including both vaginal and oral intercourse. The record reflects that appellant went so far as to communicate with the student via electronic device in order to prearrange sexual encounters at various designated locations,

including one appellant arranged at a Toledo area metropark, where appellant knew that the boy would be present while attending track practice.

{¶ 19} Despite appellant's zealous contentions to the contrary, it is not relevant to the legal implications of this case that the victim was 18 years of age, that the strict liability violations were consensual, that the victim did not desire prosecution, or that appellant subjectively perceives the punishment imposed at sentencing, which did not entail jail time, was somehow unfair, cruel, and usual.

{¶ 20} We have reviewed and considered appellant's arguments, particularly those regarding the disputed terms of punishment. We do not find the imposition of probation, community service, counseling, and the requisite registration requirements, to be disproportionate, cruel, unusual, or otherwise legally shocking so as to potentially undermine the constitutionality of the sentencing. We find appellant's first assignment of error not well-taken.

{¶ 21} In appellant's second assignment of error, she similarly maintains that the statutory scheme from which the disputed terms and conditions of sentence arise are unconstitutional. Appellant again claims that R.C. 2907.03(A)(7) is ambiguous, vague, and unconstitutional. We do not concur.

{¶ 22} In support of the second assignment, appellant maintains that the statute is unconstitutionally vague because it does not explicitly state that a student who has reached the age of majority is still encompassed by the statute. Appellant further contends that the statute is fatally flawed because it does not specify whether a victim

must be enrolled in a class taught by the defendant or a member of an athletic team coached by the defendant in order for the statute to apply. We do not concur.

{¶ 23} We find that R.C. 2907.03(A)(7) is not ambiguous, void, or otherwise unconstitutional. Appellant was employed as a teacher and an assistant coach at a public high school. At the same time, the victim was enrolled as a student in that same public high school. R.C. 2907.03(A)(7) strictly proscribes sexual conduct between a teacher in a public school and another who, "[I]s enrolled in or attends that school." The statutory language is clear.

{¶ 24} The statute does not specify whether such conduct is still unlawful in a scenario in which the involved student is age of majority because the statute is strict liability and a student having reached the age of majority does not negate guilt. The statute does not explicitly state that the involved student must be enrolled in a class taught by the teacher or a member of an athletic team coached by the teacher because that is not required for an offense to be committed.

{¶ 25} The statute makes clear that the law has been broken whether or not the student is age of majority, whether or not the student is in a class taught by that teacher, and whether or not that student is a member of an athletic team coached by that teacher. The statute makes clear that the law has been violated upon a teacher employed by a public school engaging in sexual conduct with a student simultaneously enrolled in that school. Appellant has presented no compelling legal support for the claim that the

governing statutory provisions underlying this case are unlawful or were improperly applied in this case.

{¶ 26} Wherefore, we find appellant's second assignment of error not well-taken. The judgment of the Lucas County Court of Common Pleas is hereby affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

James D. Jensen, P.J. _____
CONCUR.
JUDGE