

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-170162
Plaintiff-Appellee,	:	TRIAL NO. B-1602420-A
vs.	:	<i>JUDGMENT ENTRY.</i>
AARON GIBBONS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Following a bench trial, defendant-appellant Aaron Gibbons appeals from his conviction and sentence for unlawful sexual conduct with a minor, punishable as a third-degree felony. Gibbons' victim, the 15-year-old female friend of his stepdaughter, had stayed with the Gibbons family for three weeks. During that time, and over the next four months, Gibbons, then age 37, befriended his teenage victim, urged her to discuss her emotions with him, praised her, and regularly engaged in sexually suggestive communications with her via Facebook and Snapchat. Gibbons took his victim shopping and bought her chocolates, earbuds, and lingerie. Gibbons sought and received a photo of his victim in a brassiere that he had bought for her. Gibbons told his victim not to reveal the nature of their illicit relationship.

In February 2016, Gibbons picked the victim up at her home and drove to his home. He took her to his bedroom where he had her disrobe and lie on his bed. When

she was wearing only a bra and panties, Gibbons kissed his victim and asked “if he could finger” her. Afraid that Gibbons would be angry if she did not consent, the victim let Gibbons digitally penetrate her vagina.

Via electronic messaging, Gibbons told his victim that he hoped to advance their sexual relationship. But the victim’s parents discovered Gibbons’ texts on her smartphone and alerted the police. During two interviews at the Mayerson Center at Cincinnati Children’s Hospital the victim described her shame and confused feelings regarding her relationship with Gibbons. Although the victim told a Mayerson counselor that Gibbons had “fingered” her, she gave an equivocal answer about whether his fingers had entered her vagina. In police questioning, Gibbons admitted touching the victim.

Gibbons’ victim, a Mayerson Center counselor, and the investigating police officer each testified at trial. The victim described that she had been very embarrassed during the Mayerson interviews and had found it hard to describe her abuse at Gibbons’ hands. On direct examination, she testified that Gibbons had “fingered” her and described the act as when his two fingers had gone “in and out” of her vagina. The trial court found Gibbons guilty.

Following the receipt of a presentence-investigation report, and after a sentencing hearing at which Gibbons acknowledged that he suffers from bipolar disorder and possible sexual addiction, the court imposed sentence including an 18-month prison term, and a mandatory, five-year period of postrelease control following release from prison. Gibbons was determined to be a Tier II sexual offender. Gibbons now appeals.

In his first assignment of error, Gibbons challenges the weight and the sufficiency of the evidence adduced to support his conviction. Gibbons was convicted of unlawful sexual conduct with a minor, under R.C. 2907.04(A) which proscribes, in this instance, a person of greater than 18 years of age from engaging in sexual conduct with a person that

he knows to be under age 16. “Sexual conduct” is defined, in pertinent part, as “the insertion, however slight, of any part of the body * * * into the vaginal or anal opening of another.” R.C. 2907.01(A).

Our review of the record fails to persuade us that the trial court, sitting as the trier of fact, clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). As the weight to be given the evidence and the credibility of the witnesses was for the trial court to determine, it was entitled to reject Gibbons’ theory that, in light of the victim’s equivocal statements at the Mayerson Center, her testimony at trial was not credible, and thus the evidence did not demonstrate that he had engaged in sexual conduct as defined in R.C. 2907.01(A). *See State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The state presented ample evidence, including the express testimony of the victim, that Gibbons had penetrated her vagina with his fingers. *See* R.C. 2907.04(A); *see also Thompkins* at 387.

The record also reflects substantial, credible evidence from which the trial court could have reasonably concluded that the state had proved each element of the charged crime beyond a reasonable doubt, including that Gibbons had engaged in digital penetration of a minor that he knew to be under the age of 16 years. *See* R.C. 2907.04(A); *see also State v. Conway*, 108 Ohio St.3d 214, 2006-Ohio-791, 842 N.E.2d 996, ¶ 36. The first assignment of error is overruled.

Gibbons next argues that the trial court erred in imposing an 18-month prison term without giving any meaningful consideration to alternative community-control sanctions. We note that third-degree felonies do not carry a presumption in favor of either prison time or a community-control sanction. *See* R.C. 2929.13(C).

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Before imposing sentence, the trial court must consider the purposes and principles of sentencing, in accordance with the sentencing statutes, including R.C. 2929.11 and 2929.12. But the court is not required to make any express findings prior to imposing sentence. *See State v. Wilson*, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381, ¶ 31; *see also State v. Love*, 194 Ohio App.3d 16, 2011-Ohio-2224, 954 N.E.2d 202, ¶ 14 (1st Dist.).

Here, it is clear from the trial court's remarks at the sentencing hearing, that it considered the relevant statutory provisions in fashioning Gibbons' sentence. The court expressly stated that it had considered the risk that Gibbons would commit another offense, the need to protect the public, the nature and circumstances of the offense, and Gibbons' history, character, and condition before imposing sentence. The court noted that Gibbons had groomed his much-younger victim for sexual activity. Each of these observations is amply supported in the record, and the sentence is not otherwise contrary to law. *See* R.C. 2953.08(G)(2). The second assignment of error is overruled.

Therefore, we affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., MILLER and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on February 21, 2018
per order of the court _____.
Presiding Judge