

**IN THE COMMON PLEAS COURT OF MERCER COUNTY, OHIO
CRIMINAL DIVISION**

STATE OF OHIO

: Case No. 21-CRM-038

vs.

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: JUDGMENT ENTRY SENTENCING
(COMMUNITY CONTROL
SANCTIONS)

KEVIN J. FULLENKAMP

Defendant

Richard W. Franzen
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CELINA, OHIO

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Sup. R. 37 Statistical Report
Termination

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On January 12, 2022, this matter came on for hearing on Sentencing and Sex Offender Registration Requirements pursuant to R.C. 2929.19, the Defendant, having previously entered a plea of guilty to:

<u>Count</u>	<u>Degree</u>	<u>Charges/Specifications</u>
Amended 1	F4	2907.321(A)(5), 2907.321(C): Pandering Obscenity Involving a Minor or Impaired Person
Amended 2	F4	2907.321(A)(5), 2907.321(C): Pandering Obscenity Involving a Minor or Impaired Person
Amended 3	F4	2907.321(A)(5), 2907.321(C): Pandering Obscenity Involving a Minor or Impaired Person
Amended 4	F4	2907.321(A)(5), 2907.321(C): Pandering Obscenity Involving a Minor or Impaired Person
Amended 5	F4	2907.321(A)(5), 2907.321(C): Pandering Obscenity Involving a Minor or Impaired Person
Amended 6	F4	2907.321(A)(5), 2907.321(C): Pandering Obscenity Involving a Minor or Impaired Person
Amended 7	F4	2907.321(A)(5), 2907.321(C): Pandering Obscenity Involving a Minor or Impaired Person
Amended 8	F4	2907.321(A)(5), 2907.321(C): Pandering Obscenity Involving a Minor or Impaired Person
9	F5	2907.31(A)(1), 2907.31(F): Disseminating Matter Harmful To Juveniles

and the Defendant having previously been found guilty by this Court for the offenses for which Defendant is sentenced as set forth below in this entry. Assistant Prosecuting Attorney, Erin M. Minor appeared on behalf of the State of Ohio. The Defendant appeared with Defendant's attorney, James A. Tesno. The Court acknowledged that it had received the written presentence report prepared by Dane Gross of the Adult Probation Department as previously ordered, and it was exhibited to counsel pursuant to statute. The Court indicated to the parties that it had reviewed the presentence investigation and made preliminary findings about the required statutory factors for sentencing.

The Court first addressed the issue of the classification of the Defendant as a sex offender as defined in O.R.C. chapter 2950.01 and to what extent, if any, the notification requirements of ORC Chapter 2950 apply. The Court notified the Defendant that Defendant is a Tier II Offender and advised the Defendant of all registration duties.

The court permitted Defendant and Defendant's counsel to offer evidence and make any statements either desired prior to the court making its final findings regarding the sentencing factors and pronouncing sentence. The Defendant's counsel made a statement on behalf of Defendant. Defendant did not make a statement on Defendant's own behalf. The Assistant Prosecuting Attorney made a statement on behalf of the State.

Having considered the presentence investigation report, all relevant statutes, Criminal Rule 11(F), the statements made in open court, and any evidence presented, the court was then prepared to address the sentencing factors set forth in R.C. Chapter 2929. Based upon the foregoing, the court found the following factors applicable:

Pursuant to R.C. 2929.12(C), the court considered the following factors it determined applied, indicating that the Defendant's conduct is **less serious** than the conduct normally constituting the offense:

In committing the offense, the Defendant did not cause or expect to cause physical harm any person or property

Pursuant to R.C. 2929.12(D), the court considered the following factors it determined applied, indicating that the Defendant is **likely** to commit future crimes:

The Defendant shows no genuine remorse for the offense

Pursuant to R.C. 2929.12(E), the court considered the following factors it determined applied, indicating that the Defendant is **unlikely** to commit future crimes:

Prior to committing the offense, the Defendant had not been adjudicated a delinquent child

Prior to committing the offense, the Defendant had not been convicted of or pleaded guilty

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to a criminal offense.

Prior to committing the offense, the Defendant had led a law-abiding life for a significant number of years.

PRISON ELIGIBILITY FOR NON-VIOLENT F-4's and F-5's OR QUALIFYING ASSAULT OFFENSES [R.C. 2929.13(B)(2)(b)]

The offense is a sex offense that is a fourth or fifth degree felony violation of any provision of Chapter 2907. of the Revised Code

Further, the Court finds the following factors:

A community control sanction or a combination of community control sanctions would adequately punish the offender and protect the public from future crime, because the applicable factors under section 2929.12 of the Revised Code indicating a lesser likelihood of recidivism outweigh the applicable factors under that section indicating a greater likelihood of recidivism.

A community control sanction or a combination of community control sanctions would not demean the seriousness of the offense, because one or more factors under section 2929.12 of the Revised Code that indicate that the offender's conduct was less serious than conduct normally constituting the offense are applicable, and they outweigh the applicable factors under that section that indicate that the offender's conduct was more serious than conduct normally constituting the offense.

Having found that One (1) subsection of R.C. 2929.13(B) applies, and after considering the factors set forth in R.C. 2929.12 as found above, the court further finds that a prison term is consistent with the purposes and principles set forth in R.C. 2929.11, and the Defendant is amenable to an available community control sanction. The Court therefore used its discretion and imposed community control sanctions.

Therefore, it is the sentence of the law and judgment of the court that for the offense of:

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9	F5	2907.31(A)(1), 2907.31(F): Disseminating Matter Harmful To Juveniles
10	F5	2907.07(D)(2), 2907.07(F)(3): Importuning

that the Defendant be and is hereby sentenced to the following community control sanctions:

Residential Sanctions

R.C. 2929.16(A)(2) – County Jail for a term of up to one hundred eighty (180) days

You shall serve one hundred eighty (180) days in the Mercer County Detention Facility to be served upon notice of the Mercer County Adult Probation Department and following all rules and regulations of that facility. You are credited with three (3) days already served.

Nonresidential Sanctions

R.C. 2929.17(F) – Supervision for a term of up to five (5) years

1. You shall not violate any federal, state or local law. You shall contact one of your Probation Officers no later than 24 hours after you have been arrested or have had contact with a law enforcement officer. You shall not enter into any agreement or

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other arrangement with any law enforcement officer or agent which might place you in the position of violating any law or condition of your supervision.

2. You shall not own, possess or have under your control any firearm, dangerous ordinance or weapons of any type.
3. You shall establish a permanent residence and shall report it to your Probation Officers. You shall not change your residence, telephone number or address without the permission of one of your Probation Officers during the entire period of supervision.
4. You shall not be absent from your county of residence or the State of Ohio for more than 24 hours without permission from one of your Probation Officers.
5. You shall not associate with any person when association when that person has been prohibited by any of your Probation Officers.
6. Upon request, you shall submit to a search, without warrant, of your person, your motor vehicle or any motor vehicle under your control, any personal electronic devices owned by you or in your possession, your place of residence or any place it is believed you are residing by Probation Officers. Upon request, you will be required to provide the usernames and passwords for any social media accounts or other internet-based accounts to Probation Officers.
7. You shall follow the instructions and advice of your Probation Officers in all matters during the entire period of your supervision and shall answer all questions honestly and completely.
8. You shall pay the costs of your prosecution as directed by your Probation Officers.
9. You shall reimburse Mercer County for any assigned counsel fees incurred in your defense.
10. You shall never be alone with, or allow yourself to be placed in a position of authority or control over any person under the age of eighteen (18) years, including your own children and specifically the victim of this offense, unless you are accompanied by a responsible adult as directed by your Probation Officers.
11. You shall have no computer access or access to any electronic device that has internet capability. You shall not possess a cellular telephone with internet capabilities, and only use a cellular telephone for phone calls. In addition, you

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shall disable all social media accounts and are not permitted to possess or use any social media platforms.

12. You shall immediately contact and appropriate sexual offender treatment agency and arrange for assessment and/or counseling with them. You shall actively participate in and successfully complete the case plan designed for you. You shall not reschedule or cancel any appointments without the permission of your probation officer. You shall sign a release of confidential information for your probation officer(s) to obtain copies of any reports, case plans, and progress notes.

R.C.2929.17(H) – Drug and Alcohol Use Monitor for a term of up to five (5) years

You shall not consume any alcohol or drugs of abuse, nor are you permitted to have either in your residence, on your person, or in any vehicle under your control. You are not permitted to frequent any place where either are sold or dispensed in any matter, unless permitted by your Probation Officers. You shall submit to random, periodic urinalysis or other chemical tests as required by any of your Probation Officers or treatment providers for the purpose of determining the presence of illegal drugs and/or alcohol, and you shall pay the costs of testing without regard to the test results. Any attempt to dilute, alter or manipulate the urinalysis or other chemical test will be considered a violation of community control.

R.C.2929.17(I) – Curfew for a term of up to five (5) years

You shall maintain a daily curfew of 9:00 p.m. to 6:00 a.m., except for purposes of employment.

Federal Firearm Disability

Under Federal law, persons convicted of felonies can never lawfully possess a firearm. You should understand that if you are ever found with a firearm, even one belonging to someone else, you may be prosecuted by federal authorities and subject to imprisonment for several years.

NOTICE IF SANCTIONS VIOLATED

Pursuant to R.C. 2929.19(B)(4), the court notified the Defendant that a violation of any of these sanctions authorizes the court to impose a more restrictive sanction, a longer time under the same sanction, or a prison term of Sixteen (16) months on Amended Counts One through 8 and a prison term of Ten (10) months on Counts Nine and Ten for a total prison term of One hundred and forty-eight (148) months. The Court informed the Defendant that upon release from prison the Defendant will be required to serve a mandatory period of post-release control pursuant to R.C.

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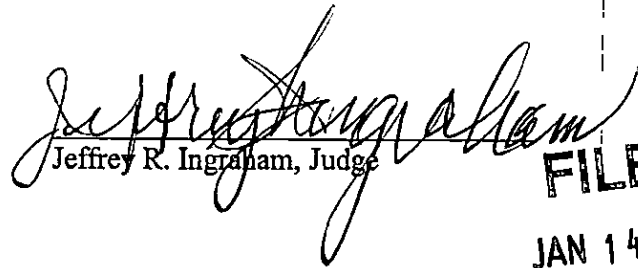
2967.28 under the supervision of the parole board for a period of five (5) years. For violation of post release control conditions, the Adult Parole Authority or Parole Board could under R.C. 2967.28(F)(3) impose a more restrictive or longer control sanction up to the maximum post-release control sanction authorized for such offense, or return Defendant to prison for up to Seventy-four (74) months. If the violation is a felony, it may also be prosecuted. In accordance with R.C. 2929.141, in addition to any prison term a court imposes for the new felony, a court also may impose a prison term for the post release control violation. The maximum prison term for the violation shall be the greater of twelve (12) months or the period of post-release control remaining for the earlier felony.

You shall report to the Mercer County Adult Probation Department forthwith.

Bond previously set is hereby discharged.

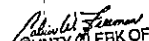
Court costs, assigned counsel fees, and Psychologist's fees are assessed against the Defendant.

IT IS SO ORDERED.


Jeffrey R. Ingraham, Judge

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CERTIFICATE OF SERVICE


MERCER COUNTY CLERK OF COURTS
CELINA, OHIO

/ This is to certify that a copy of the foregoing was delivered to Erin M. Minor, James A. Tesno, and Mercer County Sheriff's Office on this 4th day of January, 2022.


Darlene Scott

XC: COURT