

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION TWO

STATE OF MISSOURI,)	No. ED101823
)	
Respondent,)	Appeal from the Circuit Court of
)	St. Louis County
vs.)	
)	Honorable Thomas J. Prebil
ANGELO JOHNSON,)	
)	
Appellant.)	Filed: November 24, 2015

Angelo Johnson (Defendant) appeals the judgment and sentence of the Circuit Court of St. Louis County entered after a jury trial convicting him of five counts of first-degree statutory sodomy, three counts of first-degree statutory rape, three counts of incest, and one count of second-degree rape. The trial court sentenced Defendant as a predatory sexual offender to a term of life imprisonment with the possibility of parole after 25 years' incarceration. In two points on appeal, Defendant claims that the trial court (1) plainly erred by finding Defendant to be a predatory sexual offender at the sentencing hearing in violation of § 558.021 RSMo 2000, which requires that the finding be made before submission of the case to the jury; and (2) erred by finding Defendant to be a predatory sexual offender under § 558.018.5(3) RSMo Cum. Supp. 2013, because that section should not have been interpreted to apply to Defendant.

AFFIRMED.

Division II Holds: For purposes of classifying a defendant as a predatory sexual offender under § 558.018.5(3), a court may consider proscribed criminal sexual conduct charged in the defendant's present case. The trial court, therefore, did not err by classifying Defendant as a predatory sexual offender under § 558.018.5(3) based on the acts charged against Defendant in this case. Further, the trial court's violation of § 558.021's timing requirement did not cause Defendant to suffer a manifest injustice because Defendant waived jury sentencing and Defendant's enhanced sentence did not exceed the unenhanced statutory range.

Opinion by: Philip M. Hess, P.J.
Gary M. Gaertner, Jr., J. and Angela T. Quigless, J. concur.

Attorney for Appellant: Samuel E. Buffaloe

Attorney for Respondent: Karen L. Kramer

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