[Cite as *State v. Drennen*, 2022-Ohio-3413.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
GALLIA COUNTY

STATE OF OHIO,	:	
	:	Case No. 21CA10
Plaintiff-Appellee,	:	
	:	
v.	:	DECISION AND JUDGMENT
	:	ENTRY
DON LEE DRENNEN, JR.,	:	
	:	
Defendant-Appellant.	:	**RELEASED: 09/22/2022**

APPEARANCES:

Timothy P. Gleeson, Gleeson Law Office, Logan, Ohio, for Appellant.

Jason D. Holdren, Gallia County Prosecuting Attorney, Gallipolis, Ohio, for Appellee.

Wilkin, J.

{¶1} This is an appeal from a Gallia County Common Pleas Court judgment imposing an aggregate indefinite prison term of 10 ½ years to 14 years after appellant, Don Lee Drennen, Jr., pleaded guilty to several felony drug offenses. One of the offenses was aggravated trafficking in drugs, a second-degree felony, that under the Reagan Tokes Law, has an indefinite mandatory prison sentence. In his sole assignment of error, Drennen challenges the constitutionality of the Reagan Tokes Law claiming the statutory scheme violates his constitutional right to trial by jury, due process, and is contrary to the separation-of-powers doctrine.

{¶2} We review Drennen's arguments under plain error since he failed to challenge the constitutionality of the Reagan Tokes Law at the trial level.

Consistent with our previous decision in *State v. Alexander*, 2020-Ohio-1812, 190 N.E.3d 651 (4th Dist.), and finding persuasive authority from other appellate district courts, we overrule the assignment of error and find that Reagan Tokes Law is constitutional.

FACTS AND PROCEDURAL BACKGROUND

{¶3} In April 2021, Drennen's indictment was filed alleging he committed nine drug-related offenses: Count One, aggravated possession of drugs (3.44 grams of Methamphetamine), third-degree felony; Count Two, aggravated trafficking in drugs (3.44 grams of methamphetamine), third-degree felony; Count Three, possession of Fentanyl related compound (.22 grams of Fentanyl), fifth-degree felony; Count Four, trafficking in a Fentanyl related compound (.22 grams of Fentanyl), fifth-degree felony; Count Five, possession of Fentanyl related compound (6.86 grams of Fentanyl), third-degree felony; Count Six, trafficking in a Fentanyl related compound (6.86 grams of Fentanyl), third-degree felony; Count Seven, aggravated possession of drugs (42.96 grams of Methamphetamine), second-degree felony; Count Eight, aggravated trafficking in drugs (42.96 grams of Methamphetamine), second-degree felony; and Count Nine, engaging in a pattern of corrupt activity, first-degree felony.

{¶4} Drennen at arraignment pleaded not guilty to all offenses and was appointed counsel. On May 4, 2021, Drennen and the state reached a plea agreement and he signed a jury trial waiver form and a guilty plea form. The forms were presented to the trial court in which Drennen's counsel outlined the plea agreement that he was changing his plea to guilty in Counts Two, Four, Six

and Eight, and in exchange the state was going to dismiss the remaining charges including the first-degree felony offense of engaging in a pattern of corrupt activity. Additionally, the state was to remain silent as to sentencing. Drennen also addressed the trial court and acknowledged his understanding of the plea agreement, signing the forms, and his desire to plead guilty.

{¶5} The trial court proceeded with questioning Drennen of his educational background, whether he had sufficient time to review the forms with his counsel, review discovery, and had the opportunity to meaningfully discuss his case with counsel. Drennen informed the trial court that he received his GED and has some college education, reviewed discovery, and was satisfied with his counsel's representation. The trial court then began the Crim.R. 11 guilty plea colloquy by first informing Drennen that a guilty plea is a complete admission of the allegations against him and the constitutional rights he waives by pleading guilty.[1] The trial court elaborated more on each constitutional right Drennen was waiving by pleading guilty and asked Drennen if he understood, to which he stated yes to all five rights.

{¶6} The trial court also in detail explained the penalties Drennen faces for each offense, and for Count Eight, the aggravated trafficking in drugs offense, second-degree felony, the trial court advised him that the prison term is mandatory and explained the indefinite nature of that sentence. As part of its explanation, the trial court notified Drennen that:

> under indefinite sentencing it's my job to choose a mandatory uh, minimum term of prison out of the two to eight. And then once I've

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[1] The plea colloquy conducted by the trial court was one of the most thorough colloquies this court has reviewed.

> chosen that we take one half of that minimum and add it to the minimum to find a maximum uh, potential prison, okay. So if I were to choose two years as your mandatory minimum then we would add one half to that, so one to two and get a three year maximum. If I were to choose eight years as your minimum we would add four to that for a 12 uh, a 12 year maximum.

{¶7} Drennen did not have any questions regarding the indefinite nature of the sentence for his aggravated trafficking in drugs offense per Count Eight. Drennen questioned the trial court and requested further elaboration when the trial court explained that a definite prison sentence imposed for the other offenses must be served prior to the indefinite prison sentence. The trial court acquiesced and Drennen made the connection that it is similar to imposing consecutive sentences. The trial court provided Drennen with an example of best case scenario of receiving minimum concurrent sentences, to which he stated that he understood.

{¶8} Drennen then for each count admitted to the facts of the offense, including the amount of the drugs, and pleaded guilty to all four counts. This did not conclude the hearing, rather, the trial court then went line by line of the signed plea agreement form and questioned Drennen if he had any questions, but he did not. Drennen reiterated that he voluntarily signed the guilty plea form. The trial court accepted Drennen's guilty plea, granted him his own recognizance bond so he could be released, and scheduled sentencing for May 10, 2021.

{¶9} Drennen failed to appear at the May 10 sentencing hearing and a warrant was issued for his arrest. At the next sentencing hearing held on June 15, 2021, Drennen informed the trial court that he was not prepared to proceed

with sentencing and that he wished to withdraw his guilty plea. Drennen claimed that his counsel did not have his best interest in the case. The state requested denial of the oral motion to withdraw the guilty plea and Drennen's counsel left the decision to the discretion of the trial court. The trial court denied Drennen's oral motion to substitute counsel, but continued the hearing and requested both counsels to submit written briefing in support of their position on whether the plea should be withdrawn prior to the scheduled hearing of July 27, 2021. Drennen and his counsel both filed motions in support of his desire to withdraw his guilty plea.

{¶10} Drennen's counsel also orally presented argument at the July hearing, but Drennen elected to submit his position solely through his written motion. The state also addressed the trial court in support of denying the motion to withdraw guilty plea and presented the testimony of Drennen's probation officer who attested to Drennen's failure to appear at the May sentencing hearing. The trial court took the matter under advisement and informed counsels they may file additional briefing on the issue. The trial court again from the bench denied Drennen's request for substitution of counsel. Approximately two months later, the trial court journalized its decision denying Drennen's pre-sentence motion to withdraw his guilty plea in which it made key findings including but not limited to: (1) the plea hearing was thorough and lasted for 49 minutes, (2) Drennen at the hearing indicated he was satisfied with his counsel and he did receive and review discovery, (3) Drennen and his counsel met at least four times before he pleaded guilty, (4) Drennen's counsel is a highly

competent attorney, (5) the record demonstrates that Drennen understood the charges against him and the maximum penalty for each offense, and (6) Drennen admitted to selling and preparing the drugs for shipment.

{¶11} On October 4, 2021, the sentencing hearing was held. Because Drennen breached the plea agreement by failing to appear at the May sentencing hearing, the trial court inquired if the state still wished to abide by the terms of the agreement. The state indicated that it would honor the agreement's condition that the state dismiss the remaining five counts, but that the state would not remain silent as to sentencing. The trial court then recapped to Drennen the penalty he faces for each offense, including explaining the indefinite sentencing for Count Eight, aggravated trafficking in drugs. Drennen stated that he understood, he did not have any questions, and that he did not wish to make a statement.

{¶12} The trial court dismissed the remaining five counts and announced sentence after considering the record, the statements made at sentencing, the relevant statutory provisions, including R.C. 2929.11, R.C. 2929.12, and finding Drennen not amenable to community-control sanction. The trial court explained once more indefinite sentencing:

> there's a rebuttal [sic] presumption you'd be released from service of your sentence upon the expiration of the minimum prison term imposed as part of the sentence or if you have a presumptive earned early release date, whichever is earlier. However, the Department of Rehab and Corrections can rebut that presumption if they have a hearing and they make specified determinations regarding your conduct while confined, your rehabilitation, your threat to society and they would consider any restrictive housing you'd been confined in and your security classification. So they would consider those things at the hearing and if they, at that hearing, make the determinations

> that rebut the presumption of your release they may maintain your incarceration after the expiration of the minimum term or your earned early release date and they may maintain your incarceration for the length of time they determine to be reasonable. They can have more than one of those hearings if they need or want to, however if you've not been released prior to the expiration of your maximum prison term that would be imposed as part of this sentence then you must be released upon the expiration of that maximum term.

Drennen again indicated that he understood. The trial court imposed a prison sentence as to each count as follows: 30 months for Count Two, 12 months for Count Four, 30 months for Count Six, and 7 years to 10 ½ years for Count Eight. The trial court ordered Counts Six and Eight to be served concurrently, but consecutive to Counts Two and Four for an aggregate prison term of 10 ½ years to 14 years. Drennen inquired as to the minimum sentence he must serve, and the trial court informed him 10 ½ years. Drennen's indefinite sentence is now before us on appeal.

ASSIGNMENT OF ERROR

> AS AMENDED BE THE RE[A]GAN TOKES ACT, THE OHIO REVISED CODE'S SENTENCES FOR FIRST AND SECOND DEGREE QUALIFYING FELONIES VIOLATES THE CONSTITUTIONS OF THE UNITED STATES AND THE STATE OF OHIO.

{¶13} Under the sole assignment of error, Drennen presents several arguments claiming the Reagan Tokes Law is unconstitutional as applied to him for his second-degree felony conviction of aggravated trafficking in drugs. Initially, Drennen maintains his constitutional challenge is ripe for review on direct appeal. He then asserts the Reagan Tokes Law violates his right to trial by jury, right to due process, and runs afoul of the separation-of-powers doctrine. In support of his argument that the Reagan Tokes Law violates his right to trial by

jury, Drennen relies on several United States Supreme Court decisions in which the court held that factual circumstances justifying enhancing a defendant's sentence must be determined by the jury. And under the Reagan Tokes Law, Drennen claims he can be held in prison longer than the presumptive minimum based on findings by the prison authorities.

{¶14} Drennen also challenges the Reagan Tokes Law as violating his right to due process because the law, R.C. 2967.271, creates an expectation of release after serving the minimal definite sentence thus, creating a requirement for due process. According to Drennen, the Reagan Tokes Law, however, deprives an offender of due process because it leaves the discretion to extend the prison sentence to an executive agency to act as prosecutor, jury, and judge. Finally, Drennen argues the Reagan Tokes Law violates the separation-of-powers doctrine because the indefinite sentencing scheme takes away from the judiciary's exclusive jurisdiction to impose sentence. Drennen views the Reagan Tokes Law as permitting the executive branch, the Ohio Department of Rehabilitation and Correction ("ODRC"), to incarcerate a defendant longer than the presumptive definite minimum sentence.

{¶15} The state only addresses Brennen's ripeness argument and requests that we follow our precedent and hold that the issue is not ripe for review.

ANALYSIS

{¶16} “[T]he question of the constitutionality of a statute must generally be raised at the first opportunity and, in a criminal prosecution, this means in the trial court.” *State v. Awan*, 22 Ohio St.3d 120, 122, 489 N.E.2d 277 (1986). Drennen acknowledges that he did not object or present any challenge to the Reagan Tokes Law during the trial proceedings, thus, he has forfeited review of his claims but for plain error review. *See State v. Quarterman*, 140 Ohio St.3d 464, 2014-Ohio-4034, 19 N.E.3d 900, ¶ 2. Drennen also fails to argue plain error on appeal, but even if he did, he would not be able to meet his burden to demonstrate plain error.

{¶17} “Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.” Crim.R. 52(B). In order to establish plain error, Drennen “must show that (1) there was an error or deviation from a legal rule, (2) the error was plain and obvious, and (3) the error affected the outcome of the trial.” *State v. Mohamed*, 151 Ohio St.3d 320, 2017-Ohio-7468, 88 N.E.3d 935, ¶ 26, citing *State v. Barnes*, 94 Ohio St.3d 21, 27, 2002-Ohio-68, 759 N.E.2d 1240. “Notice of plain error under Crim.R. 52(B) is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.” *State v. Long*, 53 Ohio St.2d 91, 97, 372 N.E.2d 804 (1978). A “substantial right” is a “right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.” R.C. 2505.02(A)(1).

I. Ripe for Review

{¶18} We first begin with the recent Supreme Court of Ohio's decision in *State v. Maddox*, __ Ohio St.3d __, 2022-Ohio-764, __ N.E.3d __, in which the Supreme Court resolved the conflict within appellate districts on whether challenging the constitutionality of the Reagan Tokes Law was ripe for review on direct appeal. The Court held that it is and that "a criminal defendant's challenge to the constitutionality of R.C. 2967.271 is ripe for review on the defendant's direct appeal of his or her conviction and prison sentence." *Id.* at ¶ 22.

II. Reagan Tokes Law is Constitutional

{¶19} The Reagan Tokes Law was enacted in 2019 and encompassed four newly enacted statutes and amendments to many existing statutes. Pursuant to R.C. 2929.144(C), Reagan Tokes Law requires a trial court imposing a sentence on a defendant who commits a second-degree felony on or after March 2019, to impose a minimum prison term under R.C. 2929.14(A)(2)(a) and a maximum prison term as determined under R.C. 2929.144(B). There is a presumption that a defendant "shall be released from service of the sentence on the expiration of the offender's minimum prison term or on the offender's presumptive earned early release date, whichever is earlier." R.C. 2967.271(B). The presumptive earned early release date is determined per the procedures in R.C. 2967.27(F) which authorizes the sentencing court to reduce the minimum prison term under certain circumstances. R.C. 2967.271(A)(2). The presumption of serving the minimum prison term, however, may be rebutted by ODRC if it determines one of the statutorily numerated factors apply. R.C. 2967.271 provides:

(C) The presumption established under division (B) of this section is a rebuttable presumption that the department of rehabilitation and correction may rebut as provided in this division. Unless the department rebuts the presumption, the offender shall be released from service of the sentence on the expiration of the offender's minimum prison term or on the offender's presumptive earned early release date, whichever is earlier. The department may rebut the presumption only if the department determines, at a hearing, that one or more of the following applies:
(1) Regardless of the security level in which the offender is classified at the time of the hearing, both of the following apply:
(a) During the offender's incarceration, the offender committed institutional rule infractions that involved compromising the security of a state correctional institution, compromising the safety of the staff of a state correctional institution or its inmates, or physical harm or the threat of physical harm to the staff of a state correctional institution or its inmates, or committed a violation of law that was not prosecuted, and the infractions or violations demonstrate that the offender has not been rehabilitated.
(b) The offender's behavior while incarcerated, including, but not limited to the infractions and violations specified in division (C)(1)(a) of this section, demonstrate that the offender continues to pose a threat to society.
(2) Regardless of the security level in which the offender is classified at the time of the hearing, the offender has been placed by the department in extended restrictive housing at any time within the year preceding the date of the hearing.
(3) At the time of the hearing, the offender is classified by the department as a security level three, four, or five, or at a higher security level.

(D)(1) If the department of rehabilitation and correction, pursuant to division (C) of this section, rebuts the presumption established under division (B) of this section, the department may maintain the offender's incarceration in a state correctional institution under the sentence after the expiration of the offender's minimum prison term or, for offenders who have a presumptive earned early release date, after the offender's presumptive earned early release date. The department may maintain the offender's incarceration under this division for an additional period of incarceration determined by the department. The additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender's maximum prison term.
(2) If the department maintains an offender's incarceration for an additional period under division (D)(1) of this section, there shall be

> a presumption that the offender shall be released on the expiration of the offender's minimum prison term plus the additional period of incarceration specified by the department as provided under that division or, for offenders who have a presumptive earned early release date, on the expiration of the additional period of incarceration to be served after the offender's presumptive earned early release date that is specified by the department as provided under that division. The presumption is a rebuttable presumption that the department may rebut, but only if it conducts a hearing and makes the determinations specified in division (C) of this section, and if the department rebuts the presumption, it may maintain the offender's incarceration in a state correctional institution for an additional period determined as specified in division (D)(1) of this section. Unless the department rebuts the presumption at the hearing, the offender shall be released from service of the sentence on the expiration of the offender's minimum prison term plus the additional period of incarceration specified by the department or, for offenders who have a presumptive earned early release date, on the expiration of the additional period of incarceration to be served after the offender's presumptive earned early release date as specified by the department.
>
> The provisions of this division regarding the establishment of a rebuttable presumption, the department's rebuttal of the presumption, and the department's maintenance of an offender's incarceration for an additional period of incarceration apply, and may be utilized more than one time, during the remainder of the offender's incarceration. If the offender has not been released under division (C) of this section or this division prior to the expiration of the offender's maximum prison term imposed as part of the offender's non-life felony indefinite prison term, the offender shall be released upon the expiration of that maximum term.

R.C. 2967.271(C) and (D).

{¶20} Drennen's constitutional challenge of the Reagan Tokes Law as being in violation of the separation-of-powers doctrine and his right to due process are not of first impression to this court. We have previously rejected both these claims in *State v. Alexander*, 2020-Ohio-1812, 190 N.E.3d 651 (4th Dist.). We held the Reagan Tokes Law does not violate the separation-of-powers doctrine because " 'under Reagan Tokes, the executive branch cannot

keep a defendant in prison beyond the maximum sentence imposed by the trial court. In short, Reagan Tokes does not allow the ODRC to lengthen a defendant's sentence beyond the maximum sentence imposed by the trial court.' " *Id.* at ¶ 56, quoting *State v. Barnes*, 2d Dist. Montgomery No. 28613, 2020-Ohio-4150, ¶ 36.

{¶21} Similarly, we rejected the argument that the Reagan Tokes Law violates due process and found that:

> Even if we agreed that R.C. 2967.271(C) and (D) deprive offenders of a protected liberty interest, Alexander's suggestion that due process requires that the sentencing court, rather than ODRC, conduct the R.C. 2967.271(C) hearing and make the decision whether to maintain the offender's incarceration is not well-taken. The Twelfth District Court of Appeals has rejected a similar due process argument, explaining:
>
> > The hearings conducted by the ODRC under R.C. 2967.271(C) are analogous to parole revocation proceedings, probation revocation proceedings, and postrelease control violation hearings * * *. This is because, as noted by the state as part of its appellate brief, "[a]ll three situations concern whether a convicted felon has committed violations while under the control and supervision of the [ODRC]." Therefore, because due process does not require the sentencing court to conduct parole revocation proceedings, probation revocation proceedings, or postrelease control violation hearings, we likewise conclude that due process does not require the sentencing court to conduct a hearing under R.C. 2967.271(C) to determine whether the ODRC has rebutted the presumption set forth in R.C. 2967.271(B). (Alterations sic.) *State v. Guyton*, 12th Dist. Butler No. CA2019-12-203, 2020-Ohio-3837, 2020 WL 4279793, ¶ 17.
>
> * * * We agree with this reasoning and therefore reject Alexander's argument that the Reagan Tokes Law violates due process.

Alexander at ¶ 60.

{¶22} We, therefore, find Reagan Tokes Law does not run afoul of the separation-of-powers doctrine or violate Drennen's right to due process.

{¶23} The Sixth Amendment of the United States Constitution and Article I, Section 5, of the Ohio Constitution both protect a defendant's right to a trial by jury. The United States Supreme Court in three key decisions addressed the right to a jury trial when the matter involves the enhancement of a defendant's punishment. The first decision was *Apprendi v. New Jersey*, in which the Supreme Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). Two years later in *Ring v. Arizona*, the Supreme Court addressed the aggravating factors required for the imposition of a death penalty and held they must be found by a jury. 536 U.S. 584, 609, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002). Finally, in *Blakely v. Washington*, the Supreme Court overturned Blakely's sentence because the jury did not make the factual determination for the "exceptional" sentence he received. 542 U.S. 296, 304, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004).

{¶24} Drennen was sentenced by the trial court within a range that is statutorily authorized for his conviction of the second-degree felony offense of aggravated trafficking in drugs. Pursuant to R.C. 2929.144(B)(1) and R.C. 2929.14(A)(2)(a), respectively, Drennen's sentence "shall be an indefinite prison term with a stated minimum term selected by the court of two, three, four, five, six, seven, or eight years" and the "maximum prison term shall be equal to the

minimum term imposed * * * plus fifty per cent of that term." For his aggravated trafficking in drugs, second-degree felony offense, the trial court imposed a minimum mandatory prison term of 7 years and then added 50 per cent to make the maximum sentence 10 ½ years. The trial court ordered this sentence to be served consecutive with the 30-month prison term for his third-degree felony aggravated trafficking in drugs per Count Two and the 12-month prison term for trafficking in a Fentanyl related substance as to Count Four. Thus, the aggregate minimum prison term is 10 ½ years with a maximum of 14 years. *See* R.C. 2929.144(B)(2).

{¶25} As the Sixth District Court of Appeals emphasized, "there are no circumstances under which ODRC may increase punishment beyond the maximum term permitted by statute or imposed by the sentencing court. Any additional term of incarceration imposed under the Law may not exceed the maximum term imposed by the sentencing court." *State v. Bothuel*, 6th Dist. Lucas No. L-20-1053, 2022-Ohio-2606, ¶ 23. This is true as the Regan Tokes Law mandates that ODRC cannot imprison a defendant beyond his maximum sentence that is imposed by the sentencing court. *See* R.C. 2967.271(D)(1) ("The additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender's maximum prison term.") Accordingly, we hold that the Reagan Tokes Law does not violate Drennen's constitutional right to a trial by jury.

{¶26} Our holding that the Reagan Tokes Law is constitutional and does not violate the separation-of-powers doctrine, due process, or a defendant's right

to trial by jury is consistent with other appellate district courts. *See State v. Lee*, 3d Dist. Allen No. 1-21-27, 2022-Ohio-2622, ¶ 10 ("the indefinite-sentencing provisions of the Reagan Tokes Law do not facially violate the separation of powers doctrine, infringe on defendants' due process rights, or violate the right to a trial by jury."); *State v. Householder*, 5th Dist. Muskingum No. CT2021-0026, 2022-Ohio-1542, ¶ 6 ("the Reagan Tokes Law does not violate Appellant's constitutional rights to trial by jury and due process of law, and does not violate the constitutional requirement of separation of powers."); and *State v. Johnson*, 8th Dist. Cuyahoga No. 110904, 2022-Ohio-2136, ¶ 9 (Reagan Tokes Law is constitutional and does not violate the separation-of-powers doctrine, nor does it violate either a defendant's right to a jury trial or due process of law.)

{¶27} The Reagan Tokes Law is constitutional and does not violate a defendant's right to due process or the right to a trial by jury. Additionally, it does not run afoul of the separation-of-powers doctrine. Therefore, Drennen's assignment of error is overruled.

CONCLUSION

{¶28} Having overruled Drennen's assignment of error, we affirm the trial court's judgment entry of conviction and sentence.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Gallia County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

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

Smith, P.J. and Hess, J.: Concur in Judgment and Opinion.

For the Court,

BY: ______________________________
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.