[Cite as *State v. Jones*, 2021-Ohio-1164.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

CIERRA JONES,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 20 MA 0059

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 19 CR 1102

BEFORE:
David A. D'Apolito, Gene Donofrio, Cheryl L. Waite, Judges.

JUDGMENT:
Vacated and Remanded.

Atty. Paul J. Gains, Mahoning County Prosecutor, and *Atty. Ralph M. Rivera*, Assistant Prosecuting Attorney, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503, for Plaintiff-Appellee and

Atty. Brian Smith, Brian A. Smith Law Firm, LLC, 755 White Pond Drive, Suite 403, Akron Ohio 44320, for Defendant-Appellant.

Dated: March 26, 2021

D'Apolito, J.

{¶1} Defendant, Cierra Jones, appeals her three-year sentence imposed by the Mahoning County Court of Common Pleas following her guilty plea to one count of felonious assault, in violation of R.C. 2903.11(A)(1), a felony of the second degree. Appellant advances two assignments of error. First, she asserts that the imposition of a three-year sentence is contrary to the recently-enacted indefinite sentencing law. Next, she argues that her sentence is not supported by the record.

{¶2} For the following reasons, we find that the first assignment of error has merit, and, as a consequence, the sentence must be vacated and this matter remanded to the trial court for resentencing. Insofar as the proper remedy is to vacate the sentence and remand the matter for resentencing, we further find that Appellant's second assignment of error is moot.

FACTS AND PROCEDURAL HISTORY

{¶3} On January 16, 2020, Appellant was indicted for one count of felonious assault by means of a deadly weapon. The sentencing range for felonious assault is two to eight years. R.C. 2929.14(A)(2)(a). According to the indictment, the events giving rise to Appellant's conviction occurred on or about October 5, 2019.

{¶4} On March 6, 2020, Appellant entered a guilty plea to the sole count in the indictment. At the hearing, the trial court engaged in the following colloquy:

> THE COURT: Is this Reagan Tokes sentencing?
>
> MR. RICH: It is, Judge.
>
> THE COURT: So it would be, if I sent you to the penitentiary, a minimum of two to three years in the penitentiary or a maximum of eight to twelve years in the penitentiary and all of those other penalties. The indefinite terms are based upon a relatively new law that applies to felonies of this level that are felonies of violence. So the effect of that is what's called an indeterminate sentence, which means that, unlike the law that applies to other felonies,

> you have the opportunity to get out earlier or to serve the stated minimum, or to be kept for the longer period and most of that is -- well, all of that, in essence, is based upon your conduct in the penitentiary.

(3/16/20 Plea Hrg. Tr., p. 6.)

{¶5} At the sentencing hearing on May 11, 2020, the state explained that Appellant and the victim engaged in a verbal altercation in the parking lot of a local after-hours bar. Appellant and the victim patronized the same two bars that evening.

{¶6} The victim and her friends were waiting outside of the after-hours bar at closing time when Appellant and her friends exited the bar. During the verbal altercation, the victim was seated on the driver's side of her vehicle, while Appellant stood outside of the driver's side of the victim's vehicle.

{¶7} At some point, Appellant walked to her own vehicle, where she retrieved a knife, then returned to victim's vehicle and began punching the victim. The victim was able to separate herself from Appellant and leave the parking lot, but discovered after she left the scene that she had been stabbed in the arm.

{¶8} The victim drove to the hospital and received six stitches in her arm. According to the prosecutor, the victim was told that the puncture wound was close to an artery. (5/11/2020 Sent. Hrg. Tr., p. 3.) Based on the foregoing facts, the state requested a prison sentence with the duration to be determined by the trial court.

{¶9} According to Appellant's trial counsel, Appellant had been attacked by the victim's cousin and "her boyfriend" (it is not clear from the record whether he is the victim's boyfriend or the cousin's boyfriend) roughly two years before the conviction on appeal. Appellant lost six teeth as a result of the prior attack. Although Appellant reported the attack at the hospital where she was treated, no criminal charges were filed. Further, the victim, her cousin, and others had threatened Appellant on social media in the two years that followed. (*Id.*, p. 5-6.)

{¶10} The evening that the assault at issue in this appeal occurred, Appellant had been drinking alcohol and was not aware that the victim and her friends were patrons at the same after-hours bar. When Appellant and her friends left the bar, she was confronted

by the victim and the victim's friends. Fearing another physical attack, Appellant armed herself. (*Id.*, p. 7-8.)

{¶11} Appellant's trial counsel argued that Appellant did not have a lengthy record, and, although she was unemployed, she was the sole caretaker of three of her four children and her blind grandmother. (*Id.*, p. 9-10.) Based on the foregoing facts, Appellant requested a community control sentence.

{¶12} During her allocution, Appellant reiterated that she had lost six teeth as a result of the previous attack and had been taunted for two years on social media. The trial court responded, "So for two years you have been carrying this grudge?" Appellant vehemently denied that the assault was retribution for the previous attack.

{¶13} Appellant opined that the victim and her friends had followed Appellant from the first bar to the after-hours bar with the intent to confront and attack her. (*Id.*, p. 11-12.) Appellant stated that the victim's friends prevented Appellant from leaving the parking lot, threw a drink on her vehicle, and threatened her. (*Id.*, p. 13.)

{¶14} Unmoved by Appellant's protestations that she did not exact revenge on the victim, the trial court observed that the felonious assault "demonstrate[d] a level and intent there [sic] that [Appellant] carried with [her] for a long time over this trouble that [she] had with [the victim.]" (*Id.*) Although the trial court acknowledged that Appellant was "in essence, a first offender," it further observed that "[f]irst offenders that knife other people are not really someone [sic] I feel sorry for [sic] or I want to temper justice with mercy because its way beyond the line." (*Id.*, p. 15.)

{¶15} Despite the fact that the trial court recognized at the plea hearing that Appellant's sentence was governed by the new sentencing law, the trial court imposed a definite three-year sentence. In imposing the three-year sentence, the trial court cited Appellant's "ongoing feud" with the victim and the serious harm suffered by the victim. (*Id.*)

ASSIGNMENT OF ERROR NO. 1

BECAUSE THE TRIAL COURT DID NOT SENTENCE APPELLANT IN ACCORDANCE WITH THE REAGAN TOKES ACT, THE TRIAL COURT'S SENTENCE WAS CONTRARY TO LAW.

{¶16} R.C. 2953.08(G)(2) provides:

> The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.
>
> The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:
>
> (a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;
>
> (b) That the sentence is otherwise contrary to law.

{¶17} R.C. 2953.08 "specifically and comprehensively defines the parameters and standards—including the standard of review—for felony-sentencing appeals." *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, at ¶ 21. R.C. 2953.08(G)(2) expressly requires an appellate court to use the clear-and-convincing-evidence standard. *Id.* at ¶ 22.

{¶18} Am. Sub. S.B. No. 201, 2018 Ohio Laws 157, known as the "Reagan Tokes Law," was enacted in 2018 and went into effect on March 22, 2019. The new law "'significantly altered the sentencing structure for many of Ohio's most serious felonies' by implementing an indefinite sentencing system for those non-life felonies of the first and second degree, committed on or after the effective date." *State v. Polley*, 6th Dist. Ottawa No. OT-19-039, 2020-Ohio-3213, 2020 WL 3032862, ¶ 5, fn. 1, quoting The Ohio Criminal Sentencing Commission, SB 201 – The Reagan Tokes Law Indefinite Sentencing Quick Reference Guide, July 2019 and citing R.C. 2929.144(A). Under the Reagan Tokes Law,

“first- and second-degree felonies committed on or after March 22, 2019 are now subject to the imposition of indefinite sentences.” *State v. Barnes*, 2d Dist. Montgomery No. 28613, 2020-Ohio-4150, 2020 WL 4919780, ¶ 28.

{¶19} The indefinite prison terms consist of a stated minimum prison term selected by the trial court from a range of prison terms set forth in R.C. 2929.14(A) and a maximum prison term for qualifying first- and second-degree felonies as determined by the trial court from formulas set forth in R.C. 2929.144. *Id.*

{¶20} The Reagan Tokes Law establishes a presumptive-release date at the end of the offender’s minimum prison term imposed. R.C. 2967.271(B). Nevertheless, the Ohio Department of Rehabilitation and Correction (“ODRC”) may rebut that presumption and keep the offender in prison for an additional period not to exceed the maximum prison term imposed by the trial court. R.C. 2967.271(C).

{¶21} In order to rebut the presumption, ODRC must conduct a hearing and determine whether one or more of the following factors are applicable:

> (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.

R.C. 2967.271(C)(1), (2), and (3).

{¶22} R.C. 2929.144(B)(1) reads, in relevant part, "[i]f the offender is being sentenced for one felony and the felony is a qualifying felony of the first or second degree, the maximum prison term shall be equal to the minimum term imposed on the offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code plus fifty per cent of that term." A "qualifying felony of the first or second degree" is defined as a felony of the first or second degree committed on or after the effective date of [R.C. 2929.144.]" R.C. 2929.144(A).

{¶23} Therefore, the maximum term for felonious assault is the minimum term plus an additional one-half of that term. Although the trial court recognized at the plea hearing that the sentence was to be imposed according to the new law, it nonetheless imposed a definite sentence of three years at the sentencing hearing. Insofar as the trial court imposed a definite sentence on a second-degree felony committed after March 22, 2019, we find that the sentence is contrary to law. Accordingly, the sentence is vacated and this matter is remanded in order to allow the trial court to impose both a minimum and maximum sentence in conformance with the new indefinite sentencing scheme.

ASSIGNMENT OF ERROR NO. 2

> **THE TRIAL COURT'S SENTENCE WAS NOT SUPPORTED BY THE RECORD.**

{¶24} Because the sentence is contrary to law, and the proper remedy is to vacate the sentence and remand the matter for resentencing, we find that Appellant's second assignment of error is moot.

CONCLUSION

{¶25} For the foregoing reasons, Appellant's sentence is vacated and this matter is remanded for resentencing in conformance with the Reagan Tokes Law.

Donofrio, P.J., concurs.

Waite, J., concurs.

For the reasons stated in the Opinion rendered herein, it is the final judgment and order of this Court that the sentence imposed by the Court of Common Pleas of Mahoning County, Ohio, is vacated. We hereby remand this matter to the trial court for resentencing in conformance of the Reagan Tokes Law. Costs to be waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.