[Cite as *State v. Blake*, 2023-Ohio-2748.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
COLUMBIANA COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

DARRELL E. BLAKE, JR.,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 22 CO 0020

Criminal Appeal from the
Court of Common Pleas of Columbiana County, Ohio
Case No. 2019 CR 463

BEFORE:
Mark A. Hanni, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:
Affirmed.

Atty. Vito J. Abruzzino, Columbiana County Prosecutor, and *Atty. Shelley M. Pratt*, Assistant Prosecuting Attorney, Columbiana County Prosecutor's Office, 135 South Market Street, Lisbon, Ohio 44432, for Plaintiff-Appellee and

Atty. Russell S. Bensing, 600 IMG Building, 1360 East Ninth Street, Cleveland, Ohio 44114, for Defendant-Appellant.

Dated: August 8, 2023

HANNI, J.

{¶1} Defendant-Appellant, Darrell E. Blake, Jr., appeals from a Columbiana County Common Pleas Court judgment convicting him of possession of cocaine, possession of heroin, possession of a fentanyl-related compound, and having a weapon under disability, following a jury trial and the resulting sentence.

{¶2} On May 22, 2019, the Columbiana County Drug Task Force executed a search warrant at 410 14th Street in Wellsville. Jarrell Sloan resided at the home and opened the door for the officers. Appellant, who had spent the previous night at the house, was found naked in an upstairs bedroom with a woman. Appellant asked the officers if he could put on his red sweatpants, which were sitting on the bed near him. Officers searched the pants before giving them to Appellant and found approximately $4,200 in the pocket. Included in the cash found in Appellant's sweatpants was $40 from a controlled drug buy the previous day. Officers also noticed a loaded Glock pistol on the floor next to the bed. And they located a bag under the edge of the bed, covered with a towel, which contained three smaller baggies of 15.20 grams of cocaine, 14.38 grams of a heroin-fentanyl mixture, and 4.43 grams of a fentanyl-heroin mixture. The drugs had a street value of approximately $7,100. Officers also noticed various drug paraphernalia such as a digital scale and baggies.

{¶3} On October 18, 2019, a Columbiana County Grand Jury indicted Appellant on one count of possession of cocaine, a third-degree felony in violation of R.C. 2925.11(A); one count of possession of heroin, a second-degree felony in violation of R.C. 2925.11(A); one count of possession of a fentanyl-related compound, a second-degree felony in violation of R.C. 2925.11(A); one count of having a weapon under disability, a third-degree felony in violation of R.C. 2923.13(A)(3); and one count of possession of drug paraphernalia, a fourth-degree misdemeanor in violation of R.C. 2925.14(C)(1). The felony charges carried firearm specifications and forfeiture specifications. Appellant entered a not guilty plea.

{¶4} The matter proceeded to a jury trial on May 17, 2022. The jury found Appellant guilty on all felony charges and not guilty on the misdemeanor charge. It also

found $4,186 and a Glock Model 22 pistol were subject to forfeiture. The court proceeded to sentencing.

{¶5} For possession of cocaine, the trial court sentenced Appellant to 24 months in prison and a mandatory $5,000 fine. For possession of heroin, the court sentenced him to an indefinite prison term of seven to ten-and-a-half years and a mandatory $7,500 fine. For possession of a fentanyl-related compound, the court sentenced Appellant to an indefinite term of seven to ten-and-a-half years and a mandatory $7,500 fine. For having a weapon under disability, the court sentenced him to 36 months. And on the firearm specification, the court sentenced Appellant to one year which was required to be served prior to and consecutively to the other prison terms. The court ordered Appellant to serve the sentences for possession of heroin and possession of a fentanyl-related compound concurrently with each other but consecutively to the other sentences. It ordered him to serve the sentences for possession of cocaine and having a weapon under disability consecutively to each other. Thus, Appellant's aggregate sentence is a minimum of 13 years and a maximum of 16 ½ years.

{¶6} Appellant filed a timely notice of appeal on June 9, 2022. He now raises four assignments of error.

{¶7} Appellant's first assignment of error states:

> THE TRIAL COURT ERRED IN ENTERING A VERDICT OF CONVICTION WHICH WAS BASED UPON INSUFFICIENT EVIDENCE, IN DEROGATION OF DEFENDANT'S RIGHTS UNDER THE 5TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

{¶8} Appellant argues that his convictions were not based on sufficient evidence. He points out there was no testimony that he physically possessed the drugs. Appellant goes on to argue that Plaintiff-Appellee, the State of Ohio, did not prove constructive possession. He notes the evidence demonstrated he did not own the home where the drugs were found, he did not reside in the home where the drugs were found, and the drugs were not found in plain view in the room where he spent the night. Additionally, Appellant argues the controlled buys did not prove evidence of possession.

{¶9} Sufficiency of the evidence is the legal standard applied to determine whether the case may go to the jury or whether the evidence is legally sufficient as a matter of law to support the verdict. *State v. Smith*, 80 Ohio St.3d 89, 113, 684 N.E.2d 668 (1997). Sufficiency is a test of adequacy. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). Whether the evidence is legally sufficient to sustain a verdict is a question of law. *Id*. In reviewing the record for sufficiency, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements proven beyond a reasonable doubt. *Smith*, 80 Ohio St.3d 89 at 113. When evaluating the sufficiency of the evidence to prove the elements, it must be remembered that circumstantial evidence has the same probative value as direct evidence. *State v. Thorn*, 7th Dist. Belmont No. 16 BE 0054, 2018-Ohio-1028, ¶ 34, citing *State v. Jenks*, 61 Ohio St.3d 259, 272-273, 574 N.E.2d 492 (1991) (superseded by state constitutional amendment on other grounds).

{¶10} A sufficiency of the evidence challenge tests the burden of production while a manifest weight challenge tests the burden of persuasion. *Thompkins* at 390 (Cook, J., concurring). Therefore, when reviewing a sufficiency challenge, the court does not evaluate witness credibility. *State v. Yarbrough*, 95 Ohio St.3d 227, 243, 2002-Ohio-2126, 767 N.E.2d 216. Instead, the court looks at whether the evidence is sufficient if believed. *Id*. at ¶ 82.

{¶11} The jury convicted Appellant of possession of drugs in violation of R.C. 2925.11, which provides: "No person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog." "Possession" is defined as "having control over a thing or substance, but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found." R.C. 2925.01(K).

{¶12} The jury also convicted Appellant of having a firearm while under disability, which prohibits a person under indictment for, or convicted of, a felony drug offense from knowingly acquiring, having, carrying, or using any firearm. R.C. 2923.13(A)(3).

{¶13} In the context of drug offenses, "possession" may be either actual possession or constructive possession. *State v. Carter*, 7th Dist. Jefferson No. 97-JE-24, 2000 WL 748140, *4 (May 30, 2000). "Constructive possession exists when an individual

exercises dominion and control over an object, even though that object may not be within his immediate physical possession." *State v. Wolery*, 46 Ohio St.2d 316, 329, 348 N.E.2d 351 (1976).

{¶14} We must now consider the evidence put forth by the State to determine if it was sufficient to sustain the jury's verdict.

{¶15} East Liverpool Police Officer Justin Watkins was a member of the Columbiana County Drug Task Force who executed the warrant leading to Appellant's arrest. Officer Watkins testified that when the search warrant was executed, officers found Appellant in what they labeled "Room 7," an upstairs bedroom. (Tr. 327). A woman named Reign Edwards was also in Room 7 with Appellant. (Tr. 328).

{¶16} Officer Watkins testified that drug paraphernalia, a scale, money, a gun, and suspected baggies of narcotics were all found in Room 7. (Tr. 332). More specifically, the officer stated that $4,197 was in found in the pair of red sweatpants that Appellant asked for. (Tr. 334). Of that money, $40 was pre-recorded drug task force funds that had been used in a previous controlled drug buy. (Tr. 334). As to the suspected narcotics, testing revealed the baggies contained cocaine, heroin, and fentanyl. (Tr. 341-342). And Officer Watkins testified that the gun was a loaded Glock Model 22 handgun. (Tr. 342). He further testified that Appellant was not permitted to possess a firearm because of a disability resulting from an indictment that was pending against him at the time. (Tr. 345; State Ex. 1).

{¶17} Officer Watkins next testified that while he was working on the inventory from the search, Appellant and Edwards were nearby him. (Tr. 349). He overheard Edwards ask Appellant why he brought her to a "trap." (Tr. 350). A "trap house" is a house where drugs are sold. (Tr. 324). Appellant apologized to Edwards and stated that he would never do it again. (Tr. 349).

{¶18} Erin Miller is a forensic scientist at the Ohio Bureau of Criminal Identification and Investigation. She tested the suspected narcotics. Miller testified that the suspected narcotics contained cocaine, heroin, and fentanyl. (Tr. 389).

{¶19} Columbiana County Sheriff Brian McLaughlin was the director of the Columbiana County Drug Task Force (DTF) at the relevant time. Sheriff McLaughlin testified that in May 2019 the DTF made several controlled drug buys at 410 14th Street,

which is Jarrell Sloan's family house. (Tr. 423). The sheriff testified that the controlled buys used a confidential informant who made contact with Appellant to purchase drugs. (Tr. 423). He stated the investigation involved Sloan's house and involved both Sloan and Appellant. (Tr. 424). These controlled buys, the sheriff testified, led to the issuance of the search warrant for Sloan's house. (Tr. 424). The last controlled drug buy occurred the day before the DTF executed the search warrant. (Tr. 425).

{¶20} Sheriff McLaughlin testified that when the DTF arrived at Sloan's house to execute the warrant, Sloan opened the front door for them. (Tr. 427). He stated that Appellant and Edwards were found in an upstairs bedroom. (Tr. 429-430). Appellant was naked and Edwards was wrapped only in a towel. (Tr. 430). The sheriff stated that Appellant asked for his pants. (Tr. 430). There was a pair of red sweatpants on the bed, which Appellant said were his. (Tr. 430-431). The officers searched the pants before giving them to Appellant and found over $4,100 in the pocket. (Tr. 431, 452). The DTF removed the money from the pocket and gave Appellant his pants to wear. (Tr. 452). The sheriff testified the DTF also found narcotics, a gun, and drug paraphernalia in Room 7. (Tr. 434).

{¶21} The sheriff testified that when they entered Room 7, Appellant was located near the bottom right side of the bed, near the red sweatpants. (Tr. 448). A Glock pistol was located on the floor by the right side of the bed. (Tr. 448; State Ex. 10). The DTF also located some loose cash and baggies of marijuana on a television stand in Room 7. (Tr. 455-456; State Exs. 16, 17, 21).

{¶22} As to the cash found in Appellant's sweatpants, the sheriff testified that two of the twenty-dollar bills were bills that had been used in the controlled drug buy the day before. (Tr. 463). The sheriff was able to identify them by serial number. (Tr. 463).

{¶23} Next, Sheriff McLaughlin testified that underneath the right side of the bed, the officers located a towel. (Tr. 464; State Ex. 19). Underneath the towel, the officers found a single bag containing three smaller baggies of suspected narcotics, which were eventually identified as cocaine, heroin, and fentanyl. (Tr. 464-466; State Ex. 20).

{¶24} The sheriff further testified that people involved in the drug world are protective of their drugs and normally do not leave them unattended. (Tr. 469-470). As

to the value of the drugs recovered from Room 7, the sheriff estimated their total street value to be $7,100. (Tr. 470-471).

{¶25} Sheriff McLaughlin also testified that during the course of his investigation, there was no evidence that connected Edwards to any drug activity at 410 14th Street. (Tr. 472).

{¶26} "A defendant's mere presence in an area where drugs are located is insufficient to demonstrate that the defendant constructively possessed the drugs." *State v. Fry*, 4th Dist. Jackson No. 03CA26, 2004-Ohio-5747, ¶ 40. "'It must also be shown that the person was conscious of the presence of the object.'" *State v. Vaughn*, 7th Dist. Mahoning No. 20 MA 0106, 2022-Ohio-3615, ¶ 21, quoting *State v. Hankerson*, 70 Ohio St.2d 87, 91, 434 N.E.2d 1362 (1982). But a defendant's proximity to the drugs may constitute *some evidence* of constructive possession. *Id*. A defendant's conviction for drug possession can be based upon circumstantial evidence of possession. *State v. DeSarro*, 7th Dist. Columbiana No. 13 CO 39, 2015-Ohio-5470, ¶ 41. When drugs are readily usable and found in very close proximity to a defendant these facts may constitute circumstantial evidence and support a conclusion that the defendant had constructive possession of the drugs. *State v. Barker*, 7th Dist. Jefferson No. 05-JE-21, 2006-Ohio-1472, ¶ 78, quoting *State v. Kobi*, 122 Ohio App.3d 160, 174, 701 N.E.2d 420 (1997).

{¶27} In this case, Appellant was found in Room 7. The drugs and gun were also located in Room 7. Appellant was not alone in Room 7. Edwards was also found in the same room as the drugs and the gun. However, "two persons may constructively possess the same thing." *State v. Jackson*, 9th Dist. Summit Nos. 22378 and 22394, 2005-Ohio-5184, ¶ 19, citing *State v. Galindo*, 6th Dist. No. L-98-1242 (July 9, 1999). So the fact that there were two people near the contraband does not detract from Appellant possessing it.

{¶28} Another piece of circumstantial evidence tends to indicate that Appellant constructively possessed the drugs. A large amount of cash was found in his sweatpants. More significantly, $40 of that cash was from a controlled drug buy the day before. This evidence suggests that Appellant was conscious of the presence of the drugs.

{¶29} Several facts weigh in favor of Appellant's argument here such as Appellant did not own the home where the drugs were found, Appellant did not reside in the home

where the drugs were found, and the drugs were not in plain view. But Appellant clearly had access to the drugs. They were found in close proximity to Appellant. And Appellant was in possession of a large amount of cash, including cash from the previous day's controlled drug buy. Thus, when viewing the evidence in a light most favorable to the prosecution as we are required to do in a sufficiency of the evidence challenge, sufficient evidence exists to support Appellant's convictions on the drug counts.

{¶30} As to having a weapon under disability, the evidence was uncontroverted that Appellant was under a weapons disability due to a pending felony indictment. And the firearm was found on the floor in plain view near Appellant and near the bed. Viewing this evidence in favor of the State as we are required to do, there is sufficient evidence to prove that Appellant had constructive possession of the firearm while he was under a weapons disability.

{¶31} Accordingly, Appellant's first assignment of error is without merit and is overruled.

{¶32} Appellant's second assignment of error states:

> THE TRIAL COURT COMMITTED PLAIN ERROR IN ADMITTING EVIDENCE OF DRUG TRANSACTIONS FOR WHICH DEFENDANT WAS NOT CHARGED, IN DEROGATION OF DEFENDANT'S RIGHTS UNDER THE 5TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

{¶33} Here, Appellant argues the trial court erred in admitting evidence of prior drug transactions that he was not charged with. First, Appellant argues this evidence was not necessary as background information as the State argued. He asserts that it was irrelevant since he was charged with drug possession, not drug trafficking. Second, Appellant argues the evidence was not admissible under Evid.R. 404(B) as the State claimed. In its motion in limine, the State claimed it would offer evidence of the controlled drug buys for the purpose of proving opportunity, preparation, plan, or knowledge. But Appellant contends none of these things were at issue in this case. Additionally, Appellant asserts the evidence was more prejudicial than probative.

{¶34} The State filed a motion in limine on this issue to which defense counsel filed a response in opposition. But during trial, defense counsel withdrew the objection to the introduction of the uncharged conduct. (Tr. 378-379).

{¶35} Appellant acknowledges his counsel did not raise an objection to this testimony during trial and, therefore, we are to apply a plain error review. Plain error should be invoked only to prevent a clear miscarriage of justice. *State v. Underwood*, 3 Ohio St.3d 12, 14, 444 N.E.2d 1332 (1983). Plain error is one in which but for the error, the outcome of the trial would have been different. *State v. Long*, 53 Ohio St.2d 91, 97, 372 N.E.2d 804 (1978).

{¶36} Evidence of any other crime, wrong, or act is inadmissible to prove a person's character in order to show that the person acted in accordance with the character. Evid.R. 404(B)(1). However, this evidence may be admissible to show motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. Evid.R. 404(B)(2).

{¶37} The State solicited the following testimony from Sheriff McLaughlin regarding the controlled buys:

> Q. Okay. And, just generally, what was your understanding of the investigation that was ongoing into the residence at 410 14th Street in Wellsville?
>
> A. A couple of controlled buys were made, and Detective Watkins obtained a search warrant for the 410 14th Street.
>
> Q. Did you have any other understanding of the investigation, about how it came to the attention of law enforcement, this residence, or anything like that?
>
> A. I believe that went through a confidential informant, having contact with Darrell Blake to purchase the narcotics, and Jarrell Sloan actually bought those narcotics through us.

Q. Do you have an understanding, based on the investigation that was conducted and your knowledge and oversight of the investigation, who resided at 410 14th Street in Wellsville?

A. Jarrell Sloan.

Q. And did you understand who might have owned that residence?

A. It was a family house. I believe that, at the time - - I don't remember if it was his mother or his aunt, but I believe that they had just passed away, and he was still residing in the house.

Q. All right. And when you say "family house," you mean the Sloan family?

A. Yes.

Q. Okay. Thank you. I just wanted to clarify that, if that's okay.

A. No. That's okay.

Q. And the investigation itself did involve the arrangement of some controlled purchases from that residence?

A. Yes, it did.

Q. Okay. And your understanding of those controlled purchases were that both Mr. Blake and Mr. Sloan were involved in the drug activity at that residence?

A. Yes.

Q. And did that information lead to the request or presentation of a request for a search warrant to the court?

A. Yes.

> Q. And, based upon the investigation and the probable cause developed through the investigation as to the potential existence of drugs at that residence, was a search warrant, in fact, issued?
>
> A. Yes, it was.

(Tr. 423-424). This was the extent of the State's evidence relating to the controlled buys.

{¶38} In *State v. Williams*, 134 Ohio St.3d 521, 2012-Ohio-5695, 983 N.E.2d 1278, ¶ 20, the Ohio Supreme Court set out a three-step analysis for the admissibility of Evid.R. 404(B) evidence:

> The first step is to consider whether the other acts evidence is relevant to making any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. Evid.R. 401. The next step is to consider whether evidence of the other crimes, wrongs, or acts is presented to prove the character of the accused in order to show activity in conformity therewith or whether the other acts evidence is presented for a legitimate purpose, such as those stated in Evid.R. 404(B). The third step is to consider whether the probative value of the other acts evidence is substantially outweighed by the danger of unfair prejudice. See Evid.R 403.

{¶39} In applying the first step to this case, the evidence of the controlled buys was relevant to making a fact of consequence more probable than without the evidence. When the police found Appellant, he was naked in Room 7 where the drugs were located. Appellant asked police for his sweatpants and indicated that the red sweatpants on the bed were his. Before handing Appellant the sweatpants, the officers looked in the pockets where they found a large amount of cash. Included in the cash were two twenty-dollar bills from the previous day's controlled drug buy at the same house. Thus, the evidence of the controlled drug buys connected the cash in Appellant's pocket to the drugs. This evidence helped to establish that Appellant had constructive possession of the drugs found under the bed.

{¶40} In applying the second step, the evidence of the controlled buys was not presented to prove Appellant's character in order to show he acted in conformity therewith. Instead, the evidence went toward Appellant's knowledge of the drugs in Room

7. It also demonstrated the absence of mistake in that, Appellant was not simply "in the wrong place at the wrong time."

{¶41} Finally, in applying the third step, the probative value of the controlled buys evidence was not substantially outweighed by the danger of unfair prejudice. The evidence of the controlled buys was prejudicial to Appellant, as is most all evidence presented by the State. But its probative value was not substantially outweighed by the danger of *unfair* prejudice. As noted above, evidence of the controlled buys was offered to show that Appellant knew of the drugs because money from a controlled drug buy was in his sweatpants' pocket. Because this was a case of constructive possession, the State had to demonstrate some link between Appellant and the drugs that were found under the bed. The fact that cash from the previous day's controlled drug buy at the same house was found in Appellant's pocket helped to establish that link.

{¶42} Based on the above, we cannot conclude the trial court committed plain error in allowing the evidence of the controlled drug buys.

{¶43} Accordingly, Appellant's second assignment of error is without merit and is overruled.

{¶44} Appellant's third assignment of error states:

> THE DEFENDANT WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL, IN DEROGATION OF DEFENDANT'S RIGHTS UNDER THE 5TH, 6TH, AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

{¶45} In this assignment of error, Appellant contends his trial counsel was ineffective for failing to object to the evidence of the controlled drugs buys. Appellant acknowledges that his counsel did file a response in opposition to the State's motion in limine on the issue. But later, during trial, counsel withdrew the objection to the introduction of the evidence. (Tr. 378-379). Appellant argues the evidence should have been excluded, as he argued above, and its admission was prejudicial to him.

{¶46} To prove an allegation of ineffective assistance of counsel, the appellant must satisfy a two-prong test. First, appellant must establish that counsel's performance has fallen below an objective standard of reasonable representation. *Strickland v.*

Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraph two of the syllabus. Second, appellant must demonstrate that he was prejudiced by counsel's performance. *Id*. To show that he has been prejudiced by counsel's deficient performance, appellant must prove that, but for counsel's errors, the result of the trial would have been different. *Bradley*, at paragraph three of the syllabus.

{¶47} Appellant bears the burden of proof on the issue of counsel's ineffectiveness. *State v. Calhoun*, 86 Ohio St.3d 279, 289, 714 N.E.2d 905 (1999). In Ohio, a licensed attorney is presumed competent. *Id*.

{¶48} The failure to raise an objection alone is not enough to sustain a claim of ineffective assistance of counsel. *State v. Conway*, 108 Ohio St.3d 214, 2006-Ohio-791, 842 N.E.2d 996, ¶ 168.

{¶49} As discussed above in Appellant's second assignment of error, the evidence of the controlled drug buys was properly admitted pursuant to Evid.R. 404(B). Had Appellant's counsel objected to the evidence, the trial court would have likely overruled the objection. Thus, Appellant cannot demonstrate prejudice.

{¶50} Moreover, Appellant's counsel did initially object to the admission of the evidence in his opposition to the State's motion in limine. It was not until trial was underway, that counsel withdrew his objection. This indicates that trial counsel made a reasoned decision not to object to the evidence.

{¶51} Thus, Appellant has not established that his trial counsel was ineffective.

{¶52} Accordingly, Appellant's third assignment of error is without merit and is overruled.

{¶53} Appellant's fourth assignment of error states:

> THE MODIFICATIONS TO SENTENCING FOR FIRST AND SECOND DEGREE FELONIES MADE BY THE REAGAN-TOKES ACT VIOLATE THE DEFENDANT'S RIGHT TO JURY TRIAL, AS PROTECTED BY THE FIFTH AND FOURTEENTH AMENDMENT[S] TO THE UNITED STATES CONSTITUTION, AND THE SEPARATION OF POWERS DOCTRINE EMBEDDED IN THE OHIO CONSTITUTION.

{¶54} The trial court sentenced Appellant to an indefinite prison term of seven to ten-and-a-half years for possession of heroin and an indefinite term of seven to ten-and-a-half years for possession of a fentanyl-related compound, to be served concurrently with each other. Thus, on these offenses, Appellant will serve a minimum of seven years and the potential to serve an additional three-and-a-half years under the Reagan Tokes Law.[1]

{¶55} Appellant asserts here that the Reagan Tokes Law is unconstitutional because it violates a defendant's right to a jury trial and the separation of powers doctrine by giving the executive branch of the government the authority to increase a defendant's sentence.

{¶56} The Reagan Tokes Law, effective March 22, 2019, in general provides that first-degree and second-degree felonies not carrying a life sentence are subject to an indefinite sentencing scheme. Now, when imposing prison terms for offenders with first-degree or second-degree felony offenses, sentencing courts are to impose an indefinite sentence, meaning a stated minimum sentence as provided in R.C. 2929.14(A)(2)(a) and an accompanying maximum sentence as provided in R.C. 2929.144.

{¶57} Once an offender serves the required minimum term of incarceration, the Reagan Tokes Law provides that the offender is presumed to be released. R.C. 2967.271(B). But the DRC may rebut the presumption of release and maintain the offender in custody for a reasonable period of time, not to exceed the maximum term of incarceration imposed by the sentencing court. R.C. 2967.271(D). The DRC may overcome the presumption of release only if it conducts a hearing and finds that one or more of the following apply:

> (1)(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

1 Appellant's sentences on the other charges are definite sentences and not affected by the Reagan-Tokes Law.

> committed a violation of law that was not prosecuted, and the infractions or violations demonstrate that the offender has not been rehabilitated, [and]
>
> (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).

{¶58} Just recently, on July 26, 2023, the Ohio Supreme Court addressed the constitutionality of the Regan Tokes Law. In *State v. Hacker*, Slip Opinion No. 2023-Ohio-2535, the appellants argued that the portion of the Regan Tokes Law that allows the DRC to maintain an offender's incarceration beyond the minimum prison term imposed by a trial court, violates the separation-of-powers doctrine, procedural due process, and the right to a jury trial. The Ohio Supreme Court rejected each of these claims and upheld the constitutionality of the Regan Tokes Law. *Id*. at ¶ 25, 28, 40.

{¶59} Accordingly, Appellant's fourth assignment of error is without merit and is overruled

{¶60} For the reasons stated above, the trial court's judgment is hereby affirmed.

Robb, J., concurs.

D'Apolito, P.J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Columbiana County, Ohio, is affirmed. 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.