

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
COLUMBIANA COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

MITCHELL A. BAKER,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 22 CO 0033

Criminal Appeal from the
Court of Common Pleas of Columbiana County, Ohio
Case No. 21 CR 555

BEFORE:

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

JUDGMENT:

Reversed and Remanded.

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

Atty. Martin E. Yavorcik, 940 Windham Court, #7, Boardman, Ohio 44512, for Defendant-Appellant.

Dated: August 8, 2023

HANNI, J.

{¶1} Defendant-Appellant, Mitchell A. Baker, appeals from a Columbiana County Common Pleas Court judgment convicting him of felonious assault and domestic violence, following a jury trial.

{¶2} In 2021, Appellant was in a relationship with and lived with Abigail Rudder. On October 16, 2021, Appellant, who had been drinking, became angry with Rudder. Appellant assaulted Rudder in the trailer they shared. Rudder also accused Appellant of rape. Once Appellant fell asleep, Rudder fled from the trailer and went to the hospital where she was treated for her injuries.

{¶3} On November 17, 2021, a Columbiana County Grand Jury indicted Appellant on one count of rape, a first-degree felony in violation of R.C. 2907.02(A)(2); one count of felonious assault, a second-degree felony in violation of R.C. 2903.11(A)(1); and one count of domestic violence, a first-degree misdemeanor in violation of R.C. 2919.25(A).

{¶4} The case proceeded to a jury trial on August 9, 2022. The jury heard testimony from Rudder, the responding officer, the sexual assault nurse examiner, and Appellant. The jury could not reach a verdict on the rape count. So on that count, the trial court declared a mistrial. The jury found Appellant guilty of the felonious assault and domestic violence counts. The trial court set the matter for sentencing.

{¶5} At the sentencing hearing, the trial court sentenced Appellant to an indefinite prison term of eight to 12 years on the felonious assault count. It sentenced him to 180 days in jail on the domestic violence count. The court ordered Appellant to serve his sentences concurrently with each other.

{¶6} Subsequently, Plaintiff-Appellee, the State of Ohio moved to dismiss the rape count. The trial court granted the motion and dismissed that charge.

{¶7} Appellant filed a timely notice of appeal on August 17, 2022. He now raises three assignments of error for our review. We will address Appellant's assignments of error out of order for ease of discussion.

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

THE TRIAL COURT ERRED AS A MATTER OF LAW BY FAILING TO PROPERLY INFORM APPELLANT OF THE R.C. 2967.27(B)(2)(c) [sic.] NOTIFICATIONS AT THE SENTENCING HEARING.

{¶9} Here, Appellant contends the trial court failed to inform him at the sentencing hearing as to any of the five R.C. 2929.19(B)(2)(c) notifications required under the Reagan Tokes Law when sentencing an offender to an indefinite sentence. Thus, he asserts we must reverse and remand this matter.

{¶10} The State concedes error on this assignment of error. It acknowledges that the trial court failed to provide Appellant with the statutorily-required notifications at his sentencing hearing.

{¶11} When reviewing a felony sentence, an appellate court must uphold the sentence unless the evidence clearly and convincingly does not support the trial court's findings under the applicable sentencing statutes or the sentence is otherwise contrary to law. *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 1.

{¶12} 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.

{¶13} When sentencing an offender to prison, for a non-life felony indefinite prison term under the Reagan Tokes Law, the sentencing court must notify the offender of all of the following:

(i) That it is rebuttably presumed that the offender will be released from service of the sentence on the expiration of the minimum prison term imposed as part of the sentence or on the offender's presumptive earned early release date, as defined in section 2967.271 of the Revised Code, whichever is earlier;

(ii) That the department of rehabilitation and correction may rebut the presumption described in division (B)(2)(c)(i) of this section if, at a hearing

held under section 2967.271 of the Revised Code, the department makes specified determinations regarding the offender's conduct while confined, the offender's rehabilitation, the offender's threat to society, the offender's restrictive housing, if any, while confined, and the offender's security classification;

(iii) That if, as described in division (B)(2)(c)(ii) of this section, the department at the hearing makes the specified determinations and rebuts the presumption, the department may maintain the offender's incarceration after the expiration of that minimum term or after that presumptive earned early release date for the length of time the department determines to be reasonable, subject to the limitation specified in section 2967.271 of the Revised Code;

(iv) That the department may make the specified determinations and maintain the offender's incarceration under the provisions described in divisions (B)(2)(c)(i) and (ii) of this section more than one time, subject to the limitation specified in section 2967.271 of the Revised Code;

(v) That if the offender has not been released prior to the expiration of the offender's maximum prison term imposed as part of the sentence, the offender must be released upon the expiration of that term.

R.C. 2929.19(B)(2)(c).

{¶14} When the trial court fails to provide these five notifications at the sentencing hearing, the proper remedy is to reverse and remand the matter for resentencing. *State v. Greene*, 1st Dist. Hamilton No. C-220160, 2022-Ohio-4536, ¶ 11.

{¶15} At Appellant's sentencing hearing, the trial court failed to provide Appellant with any of the above-listed notifications. The court advised Appellant that it considered the seriousness and recidivism factors under R.C. 2929.11 and R.C. 2929.12. (Sentencing Tr. 10). It emphasized the severity of Rudder's injuries. (Sentencing Tr. 11-13). It informed him of postrelease control. (Sentencing Tr. 13-14). But the court never mentioned the R.C. 2929.19(B)(2)(c) notifications.

{¶16} Because the trial court failed to provide Appellant with the five R.C. 2929.19(B)(2)(c) notifications at the sentencing hearing, the proper remedy here is to reverse and remand this matter for resentencing.

{¶17} Accordingly, Appellant's second assignment of error has merit and is sustained.

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

AS AMENDED BY THE REAGAN TOKES ACT, THE REVISED CODE'S SENTENCES FOR QUALIFYING FELONIES VIOLATES THE CONSTITUTIONS OF THE UNITED STATES AND THE STATE OF OHIO.

{¶19} Appellant argues that the Reagan Tokes Law is unconstitutional because it violates the Sixth Amendment right to trial by jury and the doctrine of separation of powers.

{¶20} The constitutionality of a statute presents a question of law that appellate courts review de novo. But at least one appellate court has found that when the trial court fails to give the R.C. 2929.19(B)(2)(c) notifications at the sentencing hearing causing the matter to be remanded for resentencing, the question of the constitutionality of the Reagan Tokes Law becomes moot. *State v. Bentley*, 4th Dist. Adams No. 21CA1147, 2022-Ohio-1914, ¶ 15. Other courts, however, have gone on to address the constitutionality argument. See *State v. Greene*, 1st Dist. Hamilton No. C-220160, 2022-Ohio-4536; *State v. Bobo*, 8th Dist. Cuyahoga No. 111362, 2022-Ohio-3555.

{¶21} 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.

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

{¶23} Appellant’s third assignment of error states:

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO MAKE ANY ARGUMENT ON BEHALF OF APPELLANT AT SENTENCING.

{¶24} In his third assignment of error, Appellant contends his trial counsel was ineffective at his sentencing hearing because counsel failed to make an argument on his behalf for a lesser sentence.

{¶25} Given our resolution of Appellant’s second assignment of error, his third assignment of error is moot.

{¶26} For the reasons stated above, the trial court’s judgment is hereby reversed and the matter is remanded solely for resentencing.

Robb, J., concurs.

D’Apolito, P.J., concurs.

For the reasons stated in the Opinion rendered herein, the first assignment of error is overruled, the second assignment of error is sustained, and the third assignment of error is moot. It is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Columbiana County, Ohio, is reversed and the matter is remanded to the trial court solely for resentencing according to law and consistent with this Court's Opinion. Costs to be taxed against the Appellee.

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.