

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellant,

v.

DANIEL M. STAFFREY SR.,

Defendant-Appellee.

OPINION AND JUDGMENT ENTRY
Case No. 23 MA 0034

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 1995 CR 00819

BEFORE:

Cheryl L. Waite, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:

Affirmed.

Atty. Gina DeGenova, Mahoning County Prosecutor, *Atty. Ralph M. Rivera*, Chief, Criminal Division, and *Atty. Edward A. Czopur*, Assistant Prosecutor, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503, for Plaintiff-Appellant

Atty. John B. Juhasz, 7081 West Boulevard, Suite 4, Youngstown, Ohio 44512-4362, for Defendant-Appellee

Dated: December 20, 2023

WAITE, J.

{¶1} In this prosecutor’s appeal, the state appeals a March 2, 2023 judgment entry of the Mahoning County Court of Common Pleas. The state argues that the trial court improperly granted judicial release to Appellee Daniel M. Staffrey, Sr., as he is not an eligible offender. However, pursuant to a 2011 amendment to the relevant statute, R.C. 2929.20, Appellant is an eligible offender for judicial release purposes. The state’s arguments are without merit and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} This matter stems from an incident occurring on September 29, 1995, and has involved a lengthy legal dispute concerning the sentence imposed by the trial court.

{¶3} Appellee and the victim in this case were married for more than eighteen years. Thereafter, they separated and divorced. In an attempt to force his ex-wife to resume the relationship, Appellee held her at her residence against her will for more than three hours. During this time, he physically and sexually assaulted her until she was able to convince him to leave.

{¶4} On November 22, 1995, Appellee was indicted on one count of rape, a felony of the first degree in violation of R.C. 2907.02(A)(2); one count of attempted aggravated murder, a felony of the first degree in violation of R.C. 2923.02(A) and R.C. 2903.01(A); and one count of aggravated burglary, a felony of the first degree in violation of R.C. 2911.11(A)(3). An attenuated firearm specification was attached to all four counts in the indictment.

{¶5} Appellee eventually pleaded guilty to the offenses charged in the indictment in exchange for the dismissal of the firearm specifications. On November 26, 1996, the

court sentenced Appellee as follows: ten to twenty-five years of incarceration for rape; ten to twenty-five years for the kidnapping; ten to twenty-five years for aggravated burglary; and five to twenty-five years for attempted aggravated murder. All counts were ordered to run concurrently except for his attempted aggravated murder conviction, which was ordered to run consecutively. In the aggregate, Appellee was to serve fifteen to fifty years in prison. The court awarded Appellee 432 days of time served.

{¶16} Appellee's convictions and sentence were affirmed on direct appeal in *State v. Staffrey*, 7th Dist. Mahoning No. 96 CA 246, 1999 WL 436719 (June 25, 1999). Since then, Appellee has filed several motions and petitions, including a postconviction petition, a motion for shock probation/motion for reconsideration of sentence, and a motion to withdraw his guilty plea. Each of these were denied by the trial court. It appears that Appellee appealed only the denial of the motion seeking to withdraw his guilty plea. See *State ex rel. Staffrey v. Mahoning Cty. Court of Common Pleas*, 7th Dist. Mahoning 09 MA 194, 2010-Ohio-616.

{¶17} Appellee also filed two writs of mandamus/procedendo. The first was denied due to Appellee's failure to provide an affidavit attesting to his prior court filings. The second was granted in part, and the trial court was instructed to file an entry of conviction in compliance with *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163. Since he first became eligible for parole, Appellee was denied seven times and was slated to appear before the parole board again in July of 2023.

{¶18} However, on December 17, 2021, Appellee filed a motion for judicial release. While the state conceded that Appellee had demonstrated appropriate behavior while incarcerated, the state posited that Appellant was not eligible for judicial release because Senate Bill 2 ("SB 2"), which governs judicial release, was enacted after the date

of the offense and pursuant to Ohio law the provisions in the act do not take effect retroactively. On February 28, 2023, the court held a hearing, where it heard testimony from the victim opposing release, the couple's daughter opposing release, Appellee's brother in favor of release, and Appellee. The court also heard testimony from Dr. Stinson, who prepared a forensic psychology report at the court's request. The couple's son requested permission to speak in favor of release, but his request was denied. The court entertained legal arguments regarding Appellee's eligibility for judicial release and determined that he was eligible because he had served the entirety of his mandatory sentence. The court focused on the fact that offenders similarly situated typically receive sentences in the range of eight to fifteen years, while Appellee was sentenced to fifteen to fifty years, and he had served twenty-six years of that sentence without a single behavioral infraction. Based on this, the court granted Appellee's motion for judicial release.

{¶19} The record shows that, to date, Appellee has been released from incarceration and is serving a five-year community control period subject to the following conditions: a no-contact order with his ex-wife, electronic monitoring for 180 days with a reassessment to follow, a mental health assessment, and cognitive programming. The court advised Appellee that he would be subjected to the remainder of his sentence (twenty-four years) in the event of any violation.

{¶10} The state requested a stay of release which the trial court denied. The state also filed a motion for stay to this Court which was also denied. However, this Court did grant expedited review of the matter due to the fact that Appellee had been released from prison but allowed Appellee one extension of time within which to file his brief in this matter.

ASSIGNMENT OF ERROR NO. 1

The grant of judicial release was contrary to law as Ohio law does not allow for a pre-Senate Bill 2 offender serving an indeterminate sentence to be released pursuant to R.C. 2929.20.

ASSIGNMENT OF ERROR NO. 2

Defendant was serving mandatory terms of incarceration and therefore, even if the judicial release statute was applied retroactively, the grant of judicial release was contrary to law as Defendant is not an "eligible offender."

{¶11} The state argues that the trial court improperly granted Appellee's request for judicial release because SB 2 does not apply to offenders who committed their offense prior to July 1, 1996. As Appellee committed his offense on September 29, 1995, before the effective date of SB 2, he is ineligible. Finally, the state argues that the mandatory nature of Appellee's sentence also bars his eligibility for judicial release.

{¶12} Appellee responds that the statute defines an eligible offender as "any person *who on or after April 7, 2009 is serving a stated prison term that includes one or more non-mandatory prison terms.*" (Emphasis added.) R.C. 2929.20(A)(1). As Appellee was serving a prison term on April 7, 2009 and he asserts that he completed the mandatory portion of his prison term, Appellee concludes he is eligible for judicial release. He distinguishes the cases cited by the state, arguing that they almost all apply to indefinite sentences, not judicial release. Regarding the case that does address judicial

release, Appellee notes that it involved an offender who was still serving a mandatory sentence. See *State v. Ware*, 141 Ohio St.3d 160, 2014-Ohio-5201, 22 N.E.3d 1082.

{¶13} The Ohio Supreme Court has clarified that “judicial release is a privilege, not an entitlement. ‘There is no constitutional or inherent right * * * to be conditionally released before the expiration of a valid sentence.’” *Ware, supra*, at ¶ 12, citing *State ex rel. Hattie v. Goldhardt*, 69 Ohio St.3d 123, 125, 630 N.E.2d 696 (1994); *Greenholtz v. Inmates of Nebraska Penal & Corr. Complex*, 442 U.S. 1, 7, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979). “Courts have no inherent power to suspend execution of a sentence, and they must strictly construe statutes allowing such relief.” *State v. Smith*, 42 Ohio St.3d 60, 61, 537 N.E.2d 198 (1989).

{¶14} The crux of this appeal is whether Appellee is eligible for judicial release as an offender who was incarcerated during the relevant period and had completed the mandatory portion of his sentence. The state’s arguments center on SB 2, which is a grouping of general sentencing laws enacted on July 1, 1996. It has been stated that “[t]he hallmark of this enactment was truth in sentencing, which it accomplished by eliminating indefinite sentences and replacing parole with postrelease control.” *State v. Thomas*, 148 Ohio St.3d 248, 2016-Ohio-5567, 70 N.E.3d 496, ¶ 10; *Woods v. Telb*, 89 Ohio St.3d 504, 508, 733 N.E.2d 1103 (2000).

{¶15} R.C. 2929.20, the statute authorizing judicial release, provides that “an eligible offender is one who on or after April 7, 2009, is serving a stated prison term that includes one or more nonmandatory prison terms. A person may be an eligible offender and also may be an eighty percent-qualifying offender or, during a declared state of emergency, a state of emergency-qualifying offender.”

{¶16} The flaw in the state’s argument is that on September 30, 2011, years after all of the cases on which the state relies were released, the legislature amended R.C. 2929.20 to include a new effective date, and for the first time provided an eligibility date.

The General Assembly again enacted substantial changes to Ohio's felony-sentencing scheme with H.B. 86, which took effect on September 30, 2011. The General Assembly's intent in enacting H.B. 86 was “to reduce the state's prison population and to save the associated costs of incarceration by diverting certain offenders from prison and by shortening the terms of other offenders sentenced to prison.”

Thomas, supra, at ¶ 13, citing *State v. Taylor*, 138 Ohio St.3d 194, 2014-Ohio-460, 5 N.E.3d 612, ¶ 17, citing Ohio Legislative Service Commission, Fiscal Note & Local Impact Statement to Am.Sub.H.B. 86, at 3 (Sept. 30, 2011).

{¶17} Prior to 2011, the statute defined an eligible offender as follows:

(1)(a) Except as provided in division (A)(1)(b) of this section, “eligible offender” means any person serving a stated prison term of ten years or less when either of the following applies:

- (i) The stated prison term does not include a mandatory prison term.
- (ii) The stated prison term includes a mandatory prison term, and the person has served the mandatory prison term that includes one or more nonmandatory prison terms.

{¶18} Following amendment, the statute now defines an eligible offender as “any person who, on or after April 7, 2009, is serving a stated prison term that includes one or more nonmandatory prison terms.” Thus, it appears that the revised version of the statute essentially carves judicial release out of the eligibility requirements of the remaining SB 2 provisions by providing separate eligibility requirements.

{¶19} All but one of the cases cited by the state were decided prior to the 2011 amendment. The sole case decided after the amendment is *State v. Moore*, 2013-Ohio-4454, 999 N.E.2d 223 (7th Dist.). Despite being released two years after the amendment, *Moore* relied on the former version of the statute and did not consider the change in language providing a new definition of an “eligible offender.” Because the *Moore* Court failed to address or apply the revised statutory law, it is of no precedential value.

{¶20} Despite the arguments posited by the prosecutor, who fails to mention the 2011 amendment, the statutory language appears clear that any offender who is serving at least one nonmandatory sentence on or after April 7, 2009 is eligible for judicial release. Thus, while most of the provisions of SB 2 have no retroactive effect, the legislature has exempted judicial release by giving it its own effective date. Appellee is correct that the remaining cases cited by the state involve indeterminate sentencing, which has not been so amended by the legislature.

{¶21} The state also argues that Appellee was ordered to serve a mandatory sentence, which alone serves to bar him from judicial release eligibility. However, Appellee has completed the maximum number of years relating to his mandatory sentence, and at the time he sought release was serving only the nonmandatory portion of his sentence. Again, the statute as revised defines an eligible offender as “any person who, on or after April 7, 2009, is serving a stated prison term *that includes one or more*

nonmandatory prison terms.” (Emphasis added.) R.C. 2929.20(A)(1). Appellant was serving a term that included a nonmandatory term, and all that remained at the time of his release was this nonmandatory prison term. The Ohio Supreme Court has acknowledged “Ohio law provides that a prisoner cannot apply for judicial release until a period of time ‘after the expiration of all mandatory prison terms’ in the stated prison sentence. *State v. Ware*, 141 Ohio St.3d 160, 2014-Ohio-5201, 22 N.E.3d 1082, ¶ 11. It is uncontested that Appellee had served his entire mandatory sentence at the time he filed his motion for judicial release. A plain reading of the revised statute shows that he was eligible for judicial release.

{¶22} Because Appellant met the criteria to be considered an eligible offender for judicial release and this is the state’s only point of contention, the trial court did not err in granting his motion for judicial release. The state’s first and second assignments of error are without merit and are overruled.

Conclusion

{¶23} The state argues that the trial court improperly granted Appellee judicial release because he is not an eligible offender. However, Appellee meets all eligibility requirements for judicial release according to the most recent version of the relevant amended statute. As such, the state’s arguments are without merit and the judgment of the trial court is affirmed.

Robb, J. concurs.

D’Apolito, P.J. concurs.

For the reasons stated in the Opinion rendered herein, Appellant's 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 Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

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.