

[Cite as *State v. Stearns*, 2015-Ohio-3239.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 102463

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**STATE OF OHIO**

PLAINTIFF-APPELLANT

vs.

**OMAR STEARNS**

DEFENDANT-APPELLEE

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-14-584775-A

**BEFORE:** Kilbane, J., E.A. Gallagher, P.J., and E.T. Gallagher, J.

**RELEASED AND JOURNALIZED:** August 13, 2015

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MARY EILEEN KILBANE, J.:

{¶1} Plaintiff-appellant, the state of Ohio (“the state”), appeals the sentence imposed upon defendant-appellee, Omar Stearns (“Stearns”). Having reviewed the record and the controlling case law, we find no error and affirm.

{¶2} On April 24, 2014, Stearns and Unknown Male #15 were indicted pursuant to a five-count indictment in connection with alleged assaults on two women in 1994. In relevant part, the indictment charged Stearns with the April 25, 1994 rape and kidnapping of Jane Doe 1, and the July 6, 1994 rape and kidnapping of Jane Doe 2. On November 11, 2014, Stearns entered into a plea agreement with the state. Under the terms of this agreement, Stearns pled guilty to the April 25, 1994 rape count, and the July 6, 1994 rape count was amended to sexual battery, in violation of R.C. 2907.03(A)(2). The remaining kidnapping charges were dismissed. On January 6, 2015, the trial court sentenced Stearns to a definite term of five years on the rape charge, to be served consecutive to a definite term of one and one-half years for sexual battery, and five years of postrelease control sanctions. Stearns was also designated a Tier II habitual sex offender.<sup>1</sup>

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<sup>1</sup>The trial court considered that in 1995, Stearns was convicted of attempted gross sexual imposition in Cuyahoga C.P. No. CR-95-320113, and determined, based upon his overall record and the circumstances of the instant charges, that Stearns is a habitual sexual offender under Ohio’s former sexual offender registration law, “Megan’s Law.” We note that the Ohio Supreme Court has held that Megan’s Law applies retroactively to offenses committed prior to its effective date. *State*

{¶3} The state now appeals, and assigns the following error for our review:

Because Defendant-Appellee committed his offenses prior to July 1, 1996, the trial court erred when it sentenced Defendant-Appellee under sentencing provisions effective July 1, 1996 and H.B. 86 provisions effective September 30, 2011.

{¶4} Within its sole assignment of error, the state argues that the trial court erred in imposing a definite term of imprisonment under the provisions of H.B. 86 that was in effect at the time of Stearns’s 2015 sentencing. The state maintains that Stearns should have been sentenced to an indefinite term of imprisonment under the former sentencing provisions of S.B. 2, which required all defendants who committed crimes prior to July 1, 1996, be “sentenced under the law in existence at the time of the offense.” The state further argues that when H.B. 86 was enacted in 2011, it did not repeal this language in S.B. 2. The state acknowledges that its arguments have been rejected in recent decisions issued by this court; however, it asserts the issue nonetheless in order to preserve it for further appeal.

{¶5} At the time of Stearns’s offenses, the penalty for first-degree offenses such as rape was an indefinite term of a minimum of 5, 6, 7, 8, 9, and 10 years, and a maximum of 25 years. *State v. Bryan*, 8th Dist. Cuyahoga No. 101209,

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*v. Cook*, 83 Ohio St.3d 404, 410, 1998-Ohio-291, 700 N.E.2d 570. *See also State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108 (concluding that the legislature intended that Megan’s Law apply retroactively, but the current statutory scheme, Am.Sub. S.B. 10, enacted in 2007, does not apply retroactively). *See also State v. Jackson*, 8th Dist. Cuyahoga No. 100877, 2014-Ohio-5137, ¶ 22-24.

2015-Ohio-1635, ¶ 3. In 1996, S.B. 2 amended the sentencing statutes. Under the amended statutes, the penalty for a first-degree felony was a definite term of between three and ten years. *Id.* In promulgating these 1996 sentencing changes in S.B. 2, however, the General Assembly specifically declared that all defendants who committed crimes on or before July 1, 1996, had to be sentenced under the law in existence at the time of the offense, “notwithstanding division (B) of section 1.58 of the Revised Code.” Section 3, Am.Sub.S.B. No. 269, 146 Ohio Laws, Part IV, 11099, amending Section 5 of S.B. 2. *Id.*; *Jackson*, 8th Dist. Cuyahoga No. 100877, 2014-Ohio-5137, quoting *State v. Rush*, 83 Ohio St.3d 53, 1998-Ohio-423, 697 N.E.2d 634 (1998).

{¶6} H.B. 86 amended the sentencing statutes again, however, effective September 30, 2011. Under H.B. 86, the penalty for a first-degree felony is a definite term of between 3 and 11 years. In Sections 4 of H.B. 86, however, the General Assembly expressly provided that

[t]he amendments to sections \* \* \* (A) of section 2929.14 of the Revised Code [setting forth sentencing ranges for, inter alia, first degree felonies] that are made in this act apply to a person who commits an offense specified or penalized under those sections on or after the effective date of this section and to a person to whom division (B) of section 1.58 of the Revised Code makes the amendments applicable.

{¶7} R.C. 1.58(B) in turn provides:

If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.

{¶8} Therefore, S.B. 2 was drafted to provide for sentencing under the law in existence at the time of the offense, “notwithstanding division (B) of section 1.58,” whereas H.B. 86 specifically incorporated the protections of R.C. 1.58, and its changes apply to “persons penalized \* \* \* under [R.C. 2929.14] on or after [its] effective date[.]” In light of this distinction, the *Jackson* court held that the defendant, who was convicted of a cold case rape from 1993, but was not sentenced until 2013, was erroneously sentenced to an indefinite term by operation of S.B. 2. In concluding that the trial court should have sentenced Jackson in accordance with the definite terms set forth in H.B. 86, the *Jackson* court noted that in *State v. Limoli*, 140 Ohio St.3d 188, 2014-Ohio-3072, 16 N.E.3d 641, the Ohio Supreme Court held that individuals who possessed crack cocaine, in violation of R.C. 2925.11, prior to September 30, 2011 (the effective date of H.B. 86) but sentenced after its effective date, must be sentenced under the H.B. 86 amendments.

{¶9} The state insists that S.B. 2 governs the prison term because the legislature did not specifically repeal this portion of S.B. 2 when it enacted H.B. 86 in 2011.

{¶10} The *Jackson* court rejected this same argument, however, and stated:

[A] thorough review of H.B. 86 and recent case precedent reveal that H.B. 86 is not merely an amendment to S.B. 2, and furthermore, does not contain the same exclusionary language found in S.B. 2.

*Jackson*, 8th Dist. Cuyahoga No. 100877, 2014-Ohio-5137.

{¶11} The *Jackson* court also observed that Section 4 of H.B. 86 provides that the penalties for first-degree felonies such as rape, as set forth in R.C. 2929.14(A), “apply to a person penalized — under th[at] section[] on or after the effective date of this section

and to a person to whom division (B) of Section 1.58 of the Revised Code makes the amendments applicable.”

{¶12} Moreover, this court has repeatedly concluded that under H.B. 86, a defendant who, prior to September 30, 2011, committed the offense of rape and was not sentenced until after that date, is subject to a definite term of imprisonment as set forth for first-degree felonies under H.B. 86. *See Bryan*, 8th Dist. Cuyahoga No. 101209, 2015-Ohio-1635, ¶ 3; *State v. Kent*, 8th Dist. Cuyahoga No. 101853, 2015-Ohio-1546; *State v. Jackson*, 8th Dist. Cuyahoga No. 101543, 2015-Ohio-874. Therefore, pursuant to R.C. 2929.14(A), as amended by H.B. 86, the five-year definite term imposed by the trial court on the rape conviction is proper.

{¶13} As to the sexual battery conviction, we note that H.B. 86 maintained the term of imprisonment set forth in S.B. 2 for sexual battery, which is 12, 18, 24, 30, 36, 42, 48, 54, or 60 months. *State v. Rammel*, 2d Dist. Montgomery Nos. 24871 and 24872, 2013-Ohio-3045, ¶ 16; *State v. Snyder*, 3d Dist. Seneca No. 13-11-37, 2012-Ohio-3069, ¶ 20, fn. 3; *State v. Little*, 5th Dist. Muskingum No. CT2011-0057, 2012-Ohio-2895, ¶ 11. Therefore, the trial court did not err in imposing an 18-month term of imprisonment for this offense.

{¶14} In light of all of the foregoing, the state’s assignment of error is without merit.

{¶15} Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

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

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MARY EILEEN KILBANE, JUDGE

EILEEN A. GALLAGHER, P.J., and  
EILEEN T. GALLAGHER, J., CONCUR