

[Cite as *State v. Hale*, 2018-Ohio-2301.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 106343

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**SAYE'QUEE L. HALE**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
AFFIRMED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case Nos. CR-16-608795-A, CR-16-610050-A, and CR-16-611319-A

**BEFORE:** McCormack, P.J., E.T. Gallagher, J., and Laster Mays, J.

**RELEASED AND JOURNALIZED:** June 14, 2018

**ATTORNEYS FOR APPELLANT**

Mark A. Stanton  
Cuyahoga County Public Defender

By: John T. Martin  
Assistant Public Defender  
310 Lakeside Avenue, Ste. 200  
Cleveland, OH 44113

**ATTORNEYS FOR APPELLEE**

Michael C. O'Malley  
Cuyahoga County Prosecutor

By: Frank Romeo Zeleznikar  
Assistant County Prosecutor  
Justice Center, 8th Floor  
1200 Ontario Street  
Cleveland, OH 44113

TIM McCORMACK, P.J.:

{¶1} Defendant-appellant Saye'Quee Hale appeals his sentence following a guilty plea. Finding no merit to the appeal, we affirm.

{¶2} Hale was indicted in three cases in the Cuyahoga County Court of Common Pleas for numerous charges. On November 29, 2016, Hale pleaded guilty to participating in a criminal gang, receiving stolen property, burglary, two counts of robbery, aggravated robbery, two counts of grand theft, and attempted grand theft in Cuyahoga C.P. No. CR-16-608795; aggravated robbery in Cuyahoga C.P. No. CR-16-610050; and seven counts of aggravated robbery in Cuyahoga C.P. No. CR-16-611319. The remaining charges were nolle.

{¶3} At the sentencing hearing, the trial court imposed a sentence of six years in prison.

Thereafter, the court addressed Hale's eligibility for judicial release:

I am going to preclude Mr. Hale from participating in the judicial release program, which he would be eligible for after five years in prison not counting his jail time credit.

You have to spend five years in prison for — to be — in this circumstance to be eligible for \* \* \* judicial release. But I'm not going to authorize judicial release in this situation even if Mr. Hale does what I expect him to do in prison, and that is to continue to better himself.

And in the sentencing entry, the court stated, "No judicial release or early release program."

{¶4} Hale now appeals from his sentence, assigning one error for our review: The trial court erred when it ordered that the defendant was not eligible for judicial release. Hale essentially argues that the court has effectively, and improperly, denied him an opportunity to

seek judicial release. We disagree. We find that the issue of judicial release is premature and, therefore, this appeal is not ripe for review.

{¶5} R.C. 2929.20, which governs judicial release, defines “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.” R.C. 2929.20(A)(1)(a). Upon motion by an eligible offender, the sentencing court “may reduce the eligible offender’s aggregated nonmandatory prison term or terms through a judicial release under this section.” R.C. 2929.20(B). The statute confers considerable discretion upon a trial court in deciding whether to grant or deny an offender’s motion for judicial release. *State v. Pollard*, 8th Dist. Cuyahoga No. 97166, 2012-Ohio-1196, ¶ 18. And the statute provides specific time periods in which an eligible offender may seek judicial release:

If the aggregated nonmandatory prison term or terms is more than five years but not more than ten years, the eligible offender may file the motion not earlier than the date on which the eligible offender has served five years of the offender’s stated prison term or, if the prison term includes a mandatory prison term or terms, not earlier than five years after the expiration of all mandatory prison terms.

R.C. 2929.20(C)(4).

{¶6} Here, Hale claims that the court’s language that “no judicial release” in its sentencing entry essentially means that judicial release would never be available to him, thus depriving him of the opportunity to obtain judicial release. However, because Hale had not requested judicial release (and under the statute was not yet eligible for judicial release), the trial court could not deny the request. “Only if appellant files a motion for judicial release, and only

if the motion is denied on the grounds of res judicata, would his present argument become theoretically ripe for review.” *State v. Wiggins*, 10th Dist. Franklin No. 16AP-170, 2017-Ohio-62, ¶ 25 (where trial court’s sentencing entry stated, “no judicial release, period, end of story,” the matter is not ripe for review on direct appeal); *Pollard* at ¶ 18 (appellant’s claim that the trial court abused its discretion in stating in its sentencing entry, “I’ll not consider judicial release on this case as long as I’m sitting on the bench,” is premature because the appellant could not, at the time of sentencing, move for judicial release); *State v. Burgess*, 5th Dist. Stark No. 1998CA00053, 1998 Ohio App. LEXIS 5237, 7 (Oct. 19, 1998) (finding that because appellant is not an eligible offender at the time of sentencing, he is not eligible for judicial release and, therefore, the issue is not ripe for review where the court stated at sentencing, “This court will not consider judicial release.”).

{¶7} In light of the foregoing, we find that the issue in this appeal does not become ripe for review unless and until Hale serves the five years in prison, becomes an eligible offender, and files a motion for judicial release. *Burgess*.

{¶8} Hale’s sole assignment of error is overruled.

{¶9} Judgment 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. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

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TIM McCORMACK, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and  
ANITA LASTER MAYS, J., CONCUR  
KEYWORDS:

*State v. Hale*, App. No. 106343

Judicial release; R.C. 2929.20; eligible offender; premature.

Hale's claim that the court erred when it ordered he was not eligible for judicial release in stating "no judicial release" in its sentencing entry was premature. The appeal is not ripe for review until Hale becomes an eligible offender and files a motion for judicial release.