[Cite as *State v. Meachem*, 2021-Ohio-3796.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO,	:	JUDGES:
	:	Hon. Craig R. Baldwin, P.J.
Plaintiff - Appellee	:	Hon. W. Scott Gwin, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	
PRISCILLA MEACHEM,	:	Case No. CT2021-0014
	:	
Defendant - Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Muskingum County Court of Common Pleas, Case No. CR2020-0576
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	October 8, 2021

APPEARANCES:

For Plaintiff-Appellee

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Baldwin, P.J.

{¶1} Defendant-appellant Priscilla Meachem appeals her sentence from the Muskingum County Court of Common Pleas. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant is the mother of two children, M.K. (DOB 8/8/2009) and his sister J.K. (DOB 10/30/2010). Appellant, along with her two children, was residing with her boyfriend, Elijah Waltz, in an apartment in Muskingum County when Muskingum County Adult and Child Protective Services received a report of possible abuse or neglect regarding the two children on September 30, 2020. During the children's online schooling, indications of neglect and abuse were observed. Waltz was observed yelling at the children and belittling them and it was observed that M.K. asked to use the bathroom several times during a 20 minute period without Waltz responding.

{¶3} On September 30, 2020, the children appeared online with their heads shaved bald and the camera was turned off twice, One time, M.K. returned and was holding his mouth like it was hurting and he would not speak. On October 1, 2020, when a caseworker from Child Protective Services went to the parties' home to investigate, appellant and Waltz refused to allow the caseworker to talk to the children alone. The "children were bald, appeared to be very skinny and had a gray, sunken-in appearance." Transcript of December 23, 2020 hearing at 20. They both were wearing long winter coats and long pants and M.K. had a scab on his nose, his eyes were swollen, and he had faint bruising under his eyes.

{¶4} The next day, on October 2, 2020, another caseworker attempted to make contact and Waltz called her and told her not to come. The caseworker described the

children as looking like “Holocaust survivors.” Transcript of December 23, 2020 hearing at 21. The children, when questioned, gave seemingly coached answers. They were taken into custody of Child Protective Services that day. Once the children were in foster care, it was learned that Waltz beat M.K. almost every day with, among other things, two-by-four boards, a cane and guitars. Waltz threatened to take M.K. down into the basement and cut his toes off, cut him into pieces, fry M.K.’s brain and make soup and told J.K. that he would cut J.K. up and eat her for dinner or feed her to the dogs.

{¶5} Waltz also threatened to cut M.K.’s penis off with scissors while M.K. was tied up lying down with his clothes pulled down and repeatedly called M.K. a “faggot.” Id. Both children were made to sleep on trash bags on the floor and made to perform physical exercise including squats, push-ups and jumping jacks. They were also made to march in place sometimes for hours at a time. If they did not do so correctly, they were picked up by their ears sometimes causing their ears to bled or M.K. was beaten.

{¶6} Once when M.K. would not do his squats, he was beaten with a cane on his hands, head, body and back. M.K. said that he could not breathe because of how hard he was hit. Waltz would beat M.K.’s hands using a two-by-four and on one occasion, he pulled down M.K.’s pants and underwear and grabbed and pinched his penis, causing it to hurt. Appellant and Waltz duct taped the children to restrain them at times before they went to bed on a plastic bag with no blankets. Their hands and feet were duct taped and bound and socks were stuffed into their mouths and taped over with duct tape. They were not untied if they had to use the restroom and were restrained with duct tape during the day also and when Waltz and appellant were running errands. Ear plugs were shoved

into the children's ears and duct tape was placed around their heads. At times, the children were tied to a weight bench.

{¶7} Waltz followed M.K. into the bathroom and watched while he showered and used the restroom. Occasionally, he threw jugs of cold water on M.K. because he thought M.K. was staring at appellant. Waltz then duct taped M.K.'s eyes shut. If the children threw up, they were forced to eat their own vomit.

{¶8} Both of the children's heads were shaved for punishment. J.K. was tied up using extension cords, belts and/or zip ties. On one occasion, she was restrained with belts around her body. As a result of being restrained, she suffered nerve damage to her arm and cannot use three of her fingers. At another time, J.K., while restrained, observed appellant and Waltz having sexual intercourse. The children were also deprived of food as a form of punishment and appellant and Waltz would eat food in front of them to torture them. J.K. said that she was once made to go without food and water for three days and when M.K. threatened to tell a teacher what was going on, he was forced to go without food or water for ten days. He felt sick during this time, could not walk, his belly hurt really bad and he could not get up because his knee hurt after he was hit in the knees by Waltz with a two-by-four.

{¶9} M.K., as a result of restraints, beating and torture, had scarring and ligature marks on his forearms, scarring and bruising across his hips, residual duct tape on his ankles, abrasions on his neck and scrotum, and a bruise on the back of his right leg. He was severely emaciated and, on October 5, 2020, after being in Children Services' custody for a few days, weighed 55 pounds. This is less than the first percentile for his weight even though he is in the 23rd percentile for his height. His body mass index was in

the less than the first percentile. J.K., as a result of restraints, beating and torture, had limited range of motion in her elbow, wrist and fingers, nerve damage in her right arm, and cannot use three of her fingers on her right arm. She also had significant ligature scarring on her extremities, scarring on her upper left arm and right knee and linear scarring on her lateral left torso, abdomen and right thigh. She too was severely emaciated and weighed 52 pounds on October 5, 2020, which is in the third percentile for weight although she was in the 26th percentile for height. Her body mass index was in the first percentile. The above incidents occurred between April 1, 2020 and September 30, 2020.

{¶10} Thereafter, on October 28, 2020, the Muskingum County Grand Jury indicted appellant on six count of felonious assault in violation of R.C. 2903.11(A)(1), felonies of the second degree, three counts of felonious assault in violation of R.C. 2903.11(A)(2), felonies of the second degree, six counts of kidnapping in violation of R.C. 2901.05(A)(3), felonies of the first degree, and seven counts of endangering children in violation of R.C. 2919.22(B)(2), felonies of the second degree. At her arraignment on November 4, 2020, appellant entered a plea of not guilty to the charges.

{¶11} Subsequently, on December 23, 2020, appellant withdrew her former not guilty plea and entered a plea of guilty to two counts each of felonious assault, kidnapping and endangering children. The remaining counts were dismissed. Pursuant to an Entry filed on February 9, 2021, appellant was sentenced to an aggregate prison term of fifty-four (54) years and an indefinite prison sentence of fifty-nine and one-half (59.5) years.

{¶12} Appellant now raises the following assignments of error on appeal:

{¶13} "I. THE TRIAL COURT SENTENCED APPELLANT TO AN INDEFINITE TERM OF INCARCERATION PURSUANT TO A STATUTORY SCHEME THAT VIOLATES APPELLANT'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW AS GUARANTEED BY THE UNITED STATES AND OHIO CONSTITUTIONS."

{¶14} "II. THE TRIAL COURT ERRED TO THE PREJUDICE OF THE APPELLANT BY SENTENCING HER IN CONTRAVENTION OF OHIO'S FELONY SENTENCING STATUTES."

I

{¶15} Appellant, in her first assignment of error, challenges the constitutionality of the Reagan Tokes Act, specifically R.C. 2967.271, which codified hybrid indefinite prison terms for first- and second-degree felonies. Appellant argues that the Act violates the separation of powers doctrine, the constitutional right to trial by jury, and due process.

{¶16} Revised Code 2967.271 provides, in pertinent part, as follows:

{¶17} (B) When an offender is sentenced to a non-life felony indefinite prison term, there shall be a presumption that the person shall be released from service of the sentence on the expiration of the offender's minimum prison term or on the offender's presumptive earned early release date, whichever is earlier.

{¶18} (C) The presumption established under division (B) of this section is a rebuttable presumption that the department of rehabilitation and correction may rebut as provided in this division. Unless the department rebuts the presumption, the offender shall be released from service of the sentence on the expiration of the offender's minimum prison term or on the offender's presumptive earned early release date, whichever is

earlier. The department may rebut the presumption only if the department determines, at a hearing, that one or more of the following applies:

{¶19} (1) Regardless of the security level in which the offender is classified at the time of the hearing, both of the following apply:

{¶20} (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 committed a violation of law that was not prosecuted, and the infractions or violations demonstrate that the offender has not been rehabilitated.

{¶21} (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.

{¶22} (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.

{¶23} (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.

{¶24} (D)(1) If the department of rehabilitation and correction, pursuant to division (C) of this section, rebuts the presumption established under division (B) of this section, the department may maintain the offender's incarceration in a state correctional institution under the sentence after the expiration of the offender's minimum prison term or, for offenders who have a presumptive earned early release date, after the offender's

presumptive earned early release date. The department may maintain the offender's incarceration under this division for an additional period of incarceration determined by the department. The additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender's maximum prison term.

{¶25} (2) If the department maintains an offender's incarceration for an additional period under division (D)(1) of this section, there shall be a presumption that the offender shall be released on the expiration of the offender's minimum prison term plus the additional period of incarceration specified by the department as provided under that division or, for offenders who have a presumptive earned early release date, on the expiration of the additional period of incarceration to be served after the offender's presumptive earned early release date that is specified by the department as provided under that division. The presumption is a rebuttable presumption that the department may rebut, but only if it conducts a hearing and makes the determinations specified in division (C) of this section, and if the department rebuts the presumption, it may maintain the offender's incarceration in a state correctional institution for an additional period determined as specified in division (D)(1) of this section. Unless the department rebuts the presumption at the hearing, the offender shall be released from service of the sentence on the expiration of the offender's minimum prison term plus the additional period of incarceration specified by the department or, for offenders who have a presumptive earned early release date, on the expiration of the additional period of incarceration to be served after the offender's presumptive earned early release date as specified by the department.

{¶26} The provisions of this division regarding the establishment of a rebuttable presumption, the department's rebuttal of the presumption, and the department's maintenance of an offender's incarceration for an additional period of incarceration apply, and may be utilized more than one time, during the remainder of the offender's incarceration. If the offender has not been released under division (C) of this section or this division prior to the expiration of the offender's maximum prison term imposed as part of the offender's non-life felony indefinite prison term, the offender shall be released upon the expiration of that maximum term.

{¶27} Appellant argues that the portions of the statute which allow the Department of Rehabilitation and Corrections (DRC) to administratively extend her prison term beyond her presumptive minimum prison term violate the United States and Ohio Constitutions. Appellant, however, has not yet been subject to the application of these provisions, as she has not yet served her minimum term, and therefore has not been denied release at the expiration of her minimum term of incarceration.

{¶28} This Court recently analyzed an appeal of a sentence imposed pursuant to the Reagan Tokes Act. See *State v. Downard,* 5th Dist. Muskingum No. CT2019-0079, 2020-Ohio-4227 and *State v. Kibler,* 5th Dist. Muskingum No. CT2020-0026, 2020-Ohio-4631. The appellants in *Downard* and *Kibler* entered guilty pleas and were sentenced, with the sentences in both cases affected by the Reagan Tokes Act. Both appellants appealed, arguing that the Reagan Tokes Act violated their constitutional rights to due process and trial by jury.

{¶29} In both *Downard* and *Kibler* we considered the legal concept of “ripeness for review:”

> The Ohio Supreme Court discussed the concept of ripeness for review in *State ex rel. Elyria Foundry Co. v. Indus. Comm.*, 82 Ohio St.3d 88, 1998-Ohio-366, 694 N.E.2d 459:
>
> Ripeness "is peculiarly a question of timing." *Regional Rail Reorganization Act Cases* (1974), 419 U.S. 102, 140, 95 S.Ct. 335, 357, 42 L.Ed.2d 320, 351. The ripeness doctrine is motivated in part by the desire "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies * * *." *Abbott Laboratories v. Gardner* (1967), 387 U.S. 136, 148, 87 S.Ct. 1507, 1515, 18 L.Ed.2d 681, 691. As one writer has observed:
>
> "The basic principle of ripeness may be derived from the conclusion that 'judicial machinery should be conserved for problems which are real or present and imminent, not squandered on problems which are abstract or hypothetical or remote.' * * * [T]he prerequisite of ripeness is a limitation on jurisdiction that is nevertheless basically optimistic as regards the prospects of a day in court: the time for judicial relief is simply not yet arrived, even though the alleged action of the defendant foretells legal injury to the plaintiff." Comment, Mootness and Ripeness: The Postman Always Rings Twice (1965), 65 Colum. L.Rev. 867, 876. Id. at 89, 694 N.E.2d at 460.

Downard, at ¶¶ 8-9.

{¶30} We found the appellants' appeals of the constitutionality of the Reagan Tokes Act were not ripe for review. "* * * [W]hile R.C. 2967.271 allows the DRC to rebut the presumption Appellant will be released after serving his **** minimum sentence and potentially continue his incarceration to a term not [exceeding the maximum time], Appellant has not yet been subject to such action by the DRC, and thus the constitutional issue is not yet ripe for our review." *Downard*, at ¶ 11. We determined that the appropriate action for the appellant was "to challenge the constitutionality of the presumptive release portions of R.C. 2967.271 is by filing a writ of habeas corpus if he is not released at the conclusion of his eight year minimum term of incarceration." *Downard,* at ¶ 12.

{¶31} We find that the issues presented in the current case are identical to those in *Downard* and *Kibler.* On, February 8, 2021, appellant was sentenced to fifty-four (54) years and an indefinite prison sentence of fifty-nine and one-half (59.5) years. There is no dispute that appellant has not yet been subject to R.C. 2967.271, which allows the DRC to rebut the presumption that she will be released after serving her 54 year minimum sentence and potentially continuing her incarceration to a term not exceeding 59.5 years. The constitutional issues argued by appellant pursuant to *Downard* and *Kibler* are not yet ripe for review. See also *State v. Cochran*, 5th Dist. Licking No. 2019 CA 00122, 2020-Ohio-5329 and *State v. Maddox*, 6th Dist. Lucas No. CL-19-1253, 2020-Ohio-4702. See also *State v. Tupuola*, 5th Dist. CT 2020-0056, 2021-Ohio-2577.

{¶32} Appellant's first assignment of error is, therefore, overruled.

II

{¶33} Appellant, in her second assignment of error, argues that the trial court erred in sentencing appellant in contravention of Ohio's sentencing statutes. Appellant

specifically contends that imposing in her sentence, the trial court failed to fashion a sentence that complied with R.C. 2929.11 and 2929.12. We disagree.

{¶34} Under R.C. 2953.08(G)(2), we may either increase, reduce, modify, or vacate a sentence and remand for resentencing where we clearly and convincingly find that either the record does not support the sentencing court's findings under R.C. 2929.13(B) or (D), 2929.14(B)(2)(e) or (C)(4), or 2929.20(I), or the sentence is otherwise contrary to law. *State v. Marcum,* 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231.

{¶35} "Clear and convincing evidence is that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford,* 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

{¶36} As noted by this court in *State v. Taylor,* 5th Dist. Richland No. 17CA29, 2017-Ohio-8996, ¶ 16:

> (1) A trial court's imposition of a maximum prison term for a felony conviction is not contrary to law as long as the sentence is within the statutory range for the offense, and the court considers both the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the seriousness and recidivism factors set forth [in] R.C. 2929.12. *State v. Keith,* 8th Dist. Cuyahoga Nos. 103413 and 103414, 2016-Ohio-5234, ¶ 10, 16.

{¶37} R.C. 2929.11 governs overriding purposes of felony sentencing and states, in relevant part, as follows:

> (A) A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others, to punish the offender, and to promote the effective rehabilitation of the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.
>
> (B) A sentence imposed for a felony shall be reasonably calculated to achieve the three overriding purposes of felony sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.

{¶38} R.C. 2929.12 governs factors to consider in felony sentencing. Subsection (A) states the trial court "shall consider the factors set forth in divisions (B) and (C) of this section relating to the seriousness of the conduct, [and] the factors provided in divisions (D) and (E) of this section relating to the likelihood of the offender's recidivism."

{¶39} As noted by this court in *State v. Webb,* 5th Dist. Muskingum No. CT2018-0069, 2019-Ohio-4195, ¶ 17:

> Although a trial court must consider the factors in R.C. 2929.11 and 2929.12, there is no requirement that the court state its reasons for imposing a maximum sentence, or for imposing a particular sentence within the statutory range. There is no requirement in R.C. 2929.12 that the trial court states on the record that it has considered the statutory criteria concerning seriousness and recidivism or even discussed them. (Citations omitted.)

{¶40} "The trial court has no obligation to state reasons to support its findings, nor is it required to give a talismanic incantation of the words of the statute, provided that the necessary findings can be found in the record and are incorporated into the sentencing entry." *Id.* at ¶ 19.

{¶41} Appellant, in the case sub judice, does not argue that her sentence is not within the statutory range. Rather, appellant argues that the trial court, in sentencing her, gave no consideration to the dictates of R.C. 2929.11(A) and R.C. 2929.12.

{¶42} In the case sub judice, the trial court, at the sentencing hearing, noted that appellant had a history of prior contacts with Children Services, including her oldest daughter being taken away because she was not being fed, and that it was one of the worst cases that he had ever seen. The trial court further noted the "extent and nature of this torture those children endured for five months" and the physical and mental harm to the children. Transcript of February 8, 2021 sentencing hearing at 10. Finally, the trial court, in sentencing appellant, stated, in relevant part, as follows:

{¶43} There's nothing I saw in your history, including those 12 prior complaints from Children Services, the fact that your daughter was taken away, and then, in fact, as soon as Mr. Waltz moved in with you a complaint was made to Children Services saying that he should not be anywhere with you or around those kids because he's done this in the past. But yet it continued.

{¶44} Those children, who are all three back together again now, are getting physically better, but there's some things that will not be corrected. And their mental condition, who knows. Because you indicated you were an abused child. An if there's anybody who should know you shouldn't abuse children, it should be somebody who was abused as a child themselves, because I'm sure you didn't like it, and I'm sure they didn't like it.

{¶45} There are two separate victims in this case. And there are numerous, numerous, types of incidents that occurred during that five months.

{¶46} I'm going to impose an eight-month sentence on each of the felonies of the second degree - - or eight-year sentence, not - - eight months ain't even possible in that. And a 11-year sentence on each of the felonies of the first degree.

{¶47} Court is going to order that all of those sentences be served consecutively, for a total of 54 years.

{¶48} Court will order that 111 days be applied towards that sentence.

{¶49} Court is doing this because of the model of offenses that were committed as part of this course of conduct and the harm caused by two or more of these offenses is so great and unusual that no single prison term could ever begin to satisfy what should be - - happen to you for what happened.

{¶50} Court finds that these sentences are not disproportionate to the seriousness of the conduct and danger that you pose to the public, by the findings that I've already made, and the ones in the presentence investigation, and the ones in the memorandum that apply to the Court.

{¶51} Transcript of February 8, 2021, sentencing hearing at 11-12.

{¶52} Based on the foregoing, we find that the trial court considered the purposes and principles of sentencing [R.C. 2929.11] as well as the factors that the court must consider when determining an appropriate sentence. [R.C. 2929.12]. The trial court has no obligation to state reasons to support its findings, nor is it required to give a talismanic incantation of the words of the statute, provided that the necessary findings can be found in the record and are incorporated into the sentencing entry.

{¶53} While appellant may disagree with the weight given to these factors by the trial judge, appellant's sentence was within the applicable statutory range for and therefore, we have no basis for concluding that it is contrary to law. *State v. Moyer,* 5th Dist. Licking No. 18 CA 0065, 2019-Ohio-1187, ¶ 34.

{¶54} Appellant's second assignment of error is, therefore, overruled.

{¶55} Accordingly, the judgment of the Muskingum County Court of Common Pleas is affirmed.

By: Baldwin, P.J.

Delaney, J. concurs and

Gwin, J. concurs in part and

dissents in part.

Gwin, J., concurs in part; dissents in part

{¶56} I concur in the majority's disposition of Appellant's Second Assignment of Error.

{¶57} I respectfully dissent from the majority's opinion concerning ripeness and Appellant's First Assignment of Error for the reasons set forth in my dissenting opinion in *State v. Wolfe,* 5th Dist., Licking No. 2020 CA 00021, 2020-Ohio-5501.

{¶58} I further note that the Ohio Supreme Court has accepted a certified conflict on the issue of whether the constitutionally of the Reagan Tokes Act is ripe for review on direct appeal or only after the defendant has served the minimum term and been subject to extension by application of the Act. *See, State v. Maddox*, 6th Dist. Lucas No. L-19- 1253, 2020-Ohio-4702, *order to certify conflict allowed, State v. Maddox*, 160 Ohio St.3d 1505, 2020-Ohio-6913, 159 N.E.3d 1150(Table) The conflict cases are *State v. Leet*, 2d Dist. Montgomery No. 28670, 2020-Ohio-4592; *State v. Ferguson*, 2d Dist. Montgomery No. 28644, 2020-Ohio-4153; *State v. Barne*s, 2d Dist. Montgomery No. 28613, 2020- Ohio-4150; and *State v. Guyton*, 12th Dist. Butler No. CA2019-12-203, 2020-Ohio-3837; *See also, State v. Downard,* 5th Dist. Muskingum No. CT2019-0079, 2020-Ohio-4227, *appeal accepted on Appellant's Proposition of Law No. II*, *State v. Downard*, 160 Ohio St.3d 1507, 2020-Ohio-6835, 159 N.E.3d 1507 (Table)(Sua sponte, cause held for the decision in 2020-1266, *State v. Maddox*). The Ohio Supreme Court heard oral arguments on that case on June 29, 2021.