

CASE DECISION LIST

March 10, 2022

109324 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LORENZO CLAGGETT

Affirmed.

Sean C. Gallagher, A.J., Frank D. Celebrezze, Jr., J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Qualifying felony offense; Reagan Tokes Law; R.C. 2929.144; R.C. 2967.271.*

The defendant's sentence imposed under the Reagan Tokes Law is not unconstitutional.

109420 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHANCELLOR WINKLER

Affirmed.

Lisa B. Forbes, J.; Eileen A. Gallagher, J., concurs; Anita Laster Mays, P.J., dissents (with separate opinion).

KEY WORDS: *Reagan Tokes Law.*

Defendant's sentence under the Reagan Tokes Law is affirmed pursuant to this court's en banc decision in State v. Delvallie, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470.

109500 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ABDUL LAKES

Affirmed.

Eileen T. Gallagher, J., Eileen A. Gallagher, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Purposes and principles of felony sentencing; Reagan Tokes Law.*

Sentence affirmed where record clearly and convincingly demonstrated that the court considered purposes and principles of felony sentencing outlined in R.C. 2929.11 and the seriousness and recidivism factors set forth in R.C. 2929.12 and where the indefinite sentence imposed under the Reagan Tokes Law is constitutional.

CASE DECISION LIST

109631 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANDRE FOWLER

Affirmed.

Sean C. Gallagher, A.J., Frank D. Celebrezze, Jr., J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *R.C. 2929.144; R.C. 2929.14; Reagan Tokes Act; non-life indefinite felony sentence; ripeness; due process; separation of powers.*

The defendant's sentence imposed under the Reagan Tokes Law is not unconstitutional.

109701 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JAMES L. JENKINS

Affirmed.

Sean C. Gallagher, A.J., Michelle J. Sheehan, J., and Lisa B. Forbes, J., concur.

KEY WORDS: *R.C. 2929.144; R.C. 2929.14; Reagan Tokes Act; non-life indefinite felony sentence; ripeness; due process; separation of powers.*

The defendant's sentence imposed under the Reagan Tokes Law is not unconstitutional.

109826 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LAMAR POLK

Affirmed in part; vacated in part; and remanded.

Sean C. Gallagher, A.J., and Michelle J. Sheehan, J., concur; Lisa B. Forbes, J., concurs in judgment only.

KEY WORDS: *Qualifying felony offense; Reagan Tokes Law; R.C. 2929.144; R.C. 2967.271; violent offender database; ineffective assistance of counsel.*

Trial counsel did not render ineffective assistance with respect defendant's enrollment into the violent offender database and the defendant's non-life indefinite felony sentence imposed under the Reagan Tokes Law is not unconstitutional. The trial court erred, however, in calculating the maximum term of imprisonment under R.C. 2929.144(B)(2).

CASE DECISION LIST

109946 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MARISLEYSIS GARCIA

Affirmed.

Anita Laster Mays, J., Mary J. Boyle, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *R.C. 2929.11; R.C. 2929.12; sentence contrary to law; Reagan Tokes Act.*

The trial court did not abuse its discretion by imposing a prison sentence contrary to R.C. 2929.11 and 2929.12, and the purposes and principles of the felony sentencing guidelines. Appellant's claim that the Reagan Tokes Act is unconstitutional is forfeited on appeal because she did not raise the issue in the trial court.

110079 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JERMAINE DIX

Affirmed.

Emanuella D. Groves, J., Eileen A. Gallagher, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Sentencing; R.C. 2929.12; R.C. 2929.11; recidivism and seriousness factors; R.C. 2967.271; Reagan Tokes; constitutionality; Sixth Amendment; separation of powers; jury trial.*

A sentence is not contrary to law where it is in the statutory range and the trial court states that it considered all the appropriate statutory factors. Failure of the trial court to specifically cite R.C. 2929.12 is irrelevant where the court notes that it considered all the required statutory factors. Trial court did not fail to consider mitigating factor of the defendant only facilitating the crime when the statute considers such behavior to be more serious rather than mitigating.

Based on our decision in State v. Delvallie, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470, defendant's constitutional challenges to the Reagan Tokes Law are overruled.

110105 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DELVINCI L. GREEN

Affirmed.

Mary J. Boyle, P.J., Anita Laster Mays, J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Reagan Tokes Act; constitutional; State v. Delvallie,*

CASE DECISION LIST

(Case 110105 continued)

8th Dist. Cuyahoga No. 109315, 2022-Ohio-470.

The en banc majority in Delvallie has determined that the Reagan Tokes Act is constitutional. Therefore, appellant's sentence is affirmed.

110127 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RONALD BUCKHANON

Affirmed.

Mary J. Boyle, P.J.; Emanuella D. Groves, J., concurs; Kathleen Ann Keough, J., concurs in judgment only.

KEY WORDS: Maximum sentence; State v. Jones, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649; R.C. 2929.12; Reagan Tokes Act; constitutional; State v. Delvallie, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470.

The Ohio Supreme Court in Jones concluded that the language in Marcum regarding appellate courts modifying or vacating defendant's sentence if the record failed to support it under R.C. 2929.12 was dicta. The court also concluded that an appellate court errs if it relies on Marcum and modifies or vacates a sentence "based on the lack of support in the record for the trial court's findings under R.C. 2929.11 and R.C. 2929.12." In this case, appellant's sentence is not contrary to law and is supported by the record. The en banc majority in Delvallie has determined that the Reagan Tokes Act is constitutional. Therefore, appellant's sentence is affirmed.

110159 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTWON HINES

Affirmed.

Lisa B. Forbes, J., Sean C. Gallagher, A.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: Reagan Tokes Law.

Defendant's sentence under the Reagan Tokes law is affirmed pursuant to this court's en banc decision in State v. Delvallie, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470.

CASE DECISION LIST

110193 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DARRYL HICKS

Affirmed.

Mary J. Boyle, P.J., Anita Laster Mays, J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Constitutionality of the Reagan Tokes Act; S.B. 201; failure to object to sentence.*

Appellant failed to object to the constitutionality of the Reagan Tokes Act in the trial court and therefore waived his constitutional challenges to the indefinite portion of his sentence on appeal. Appellant's sentence is affirmed

110230 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TERRENCE HARDY

Affirmed.

Sean C. Gallagher, A.J., Anita Laster Mays, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *R.C. 2929.144; R.C. 2929.14; Reagan Tokes Act; non-life indefinite felony sentence; ripeness; due process; separation of powers.*

The defendant's sentence imposed under the Reagan Tokes Law is not unconstitutional.

110287 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v THOMAS ENNIS

Affirmed.

Lisa B. Forbes, J., Sean C. Gallagher, A.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Consecutive sentences; findings; necessary to protect the public; punish the offender.*

The trial court made the required statutory findings to support the imposition of consecutive sentences. Further, the evidence in the record supports the trial court's findings. Appellant did not demonstrate that, despite his age and poor health, the trial court erred in findings consecutive sentences were necessary to punish him.

CASE DECISION LIST

110312 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOSHUA WEBSTER, JR.

Affirmed.

Mary Eileen Kilbane, J., Kathleen Ann Keough, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Guilty plea; R.C. 2967.271; Reagan Tokes; felony; indefinite sentence; Due Process Clause; separation-of-powers doctrine; Sixth Amendment right to a fair trial.*

Defendant's sentence pursuant to the Reagan Tokes Law was not unconstitutional.

110337 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DARNELL ANDERSON

Affirmed.

Sean C. Gallagher, A.J., Anita Laster Mays, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *R.C. 2929.144; R.C. 2929.14; Reagan Tokes Act; non-life indefinite felony sentence; ripeness; due process; separation of powers.*

The defendant's sentence imposed under the Reagan Tokes Law is not unconstitutional.

110368 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JASHON COURTS

Affirmed.

Frank D. Celebrezze, Jr., P.J., Kathleen Ann Keough, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Juvenile; probable-cause hearing; discretionary bindover; R.C. 2152.12; abuse of discretion; hearsay evidence; right to confrontation; due process; ineffective assistance of counsel; Reagan Tokes Act; constitutionality.*

The trial court did not err in allowing hearsay evidence during the probable-cause hearing or in finding that appellant was not amenable to rehabilitation in the juvenile justice system. Appellant's trial counsel was not ineffective by failing to object to evidence during the probable-cause hearing. Finally, this court has determined that the Reagan Tokes Act is constitutional; thus, the trial court did not err in sentencing appellant under this statute.

CASE DECISION LIST

110383 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
LINDA M. BUTORAC v HUGH OSMIC

Dismissed.

Frank D. Celebrezze, Jr., P.J., Lisa B. Forbes, J., and Mary J. Boyle, J., concur.

KEY WORDS: *Final appealable order; appellate jurisdiction; R.C. 2505.02; resolution of all claims.*

Because appellant's declaratory judgment claim was not resolved in the trial court, a final appealable order does not exist in this matter. This court lacks jurisdiction over the appeal and must dismiss.

110525 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ALBERT TOWNSEND

Affirmed and remanded.

Lisa B. Forbes, J., Anita Laster Mays, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Consecutive sentences; findings; proportionality; nunc pro tunc.*

The trial court made the required statutory findings to support the imposition of consecutive sentences despite the fact that the court did not use the exact words from the statute. A review of the record demonstrates that the trial court found that consecutive sentences were not disproportionate to the danger appellant posed to the public. Further, the evidence in the record supports the trial court's findings. However, while the trial court made the requisite statutory findings, and those findings were supported by evidence in the record, it did not incorporate those findings into its journal entry. That error can be corrected through a nunc pro tunc.

110610 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CR HILL, LLC v CITY OF WESTLAKE

Reversed and remanded.

Mary J. Boyle, J., Frank D. Celebrezze, Jr., P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *R.C. 2744.01(C)(1); governmental function; R.C. 2744.01(C)(2)(p); action taken in connection with zoning code; R.C. 2744.01(G)(1); proprietary function; R.C. 2744.02(A)(1); political subdivision immunity; R.C. 2744.02(B)(2); exception for negligent act in performance of proprietary function.*

CASE DECISION LIST

(Case 110610 continued)

Reversing denial of appellant's motion for summary judgment because appellant is immune under R.C. 2744.02(A)(1) from appellee's claims in damages. Appellant's review of appellee's development plan for compliance with the zoning code constituted a governmental function under R.C. 2744.01(C)(2)(p). The exception to immunity under R.C. 2744.02(B)(2) for an allegedly negligent act in the performance of a proprietary function does not apply, and R.C. 2744.02(B)(2) does not recognize an exception for intentional torts.

110625 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JAVON DAVIDSON

Affirmed and remanded.

Mary Eileen Kilbane, J., Frank D. Celebrezze, Jr., P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: Reagan Tokes law; right to trial by jury; separation-of-powers doctrine; due process; nunc pro tunc judgment entry; clerical mistake; maximum term.

The Reagan Tokes Law is not unconstitutional and, therefore, appellant's sentence imposed under the law does not violate appellant's constitutional rights. Remand was required for the trial court to prepare a judgment entry that correctly sets forth the defendant's sentence as stated on the record at the time of sentencing.

110648 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MARIO GOPAR

Affirmed.

Frank D. Celebrezze, Jr., P.J., Lisa B. Forbes, J., and Mary J. Boyle, J., concur.

KEY WORDS: Reagan Tokes Law; R.C. 2929.144; indefinite sentence; sexual battery; R.C. 2907.03(A)(5).

Appellant's indefinite sentence imposed under the Reagan Tokes Law is not unconstitutional.

110715 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DEENA ULLOM, ET AL. v EDWARD AGOSTON, ET AL.

CASE DECISION LIST

Affirmed.

Cornelius J. O'Sullivan, Jr., J., Frank D. Celebrezze, Jr., P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Civ.R. 12(C) motion for judgment on the pleadings; de novo review; res judicata; interlocutory order/ruling; Civ.R. 41 dismissal.*

The trial court properly granted the defendants' motion for judgment on pleadings on the ground of res judicata. In the original action, when the trial court granted judgment on the pleadings in favor of two defendants, that ended the case against those two defendants. Following the dismissal of the remaining claims, the trial court's judgment in favor of the defendants became a final, appealable order. The plaintiffs failed to appeal.

The plaintiffs' refiled action against the same defendants as in the original action, for the same dispute, was barred under the doctrine of res judicata.

110886 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LINDGREGORY CURRY

Affirmed.

Frank D. Celebrezze, Jr., P.J., Eileen T. Gallagher, J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Jail-time credit; transcript; App.R. 9; plea agreement; R.C. 2967.191; consecutive sentence; unrelated offense.*

The trial court did not err in denying appellant's motion for jail-time credit. Appellant was not entitled to jail-time credit because he was serving a prison sentence in an unrelated case, and the trial court ordered appellant's sentences to run consecutively.

110990 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: S.N.L.

Affirmed.

Mary J. Boyle, J., Sean C. Gallagher, A.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Permanent custody; best interests of child determination; CCDCFS; R.C. 2151.414; clear and convincing evidence; abuse of discretion; manifest weight of the evidence.*

Judgment affirmed. When proceeding on a motion for permanent custody, the juvenile court must satisfy the two-prong test set forth in R. C. 2151.414 before it can terminate parental rights and grant permanent custody to the agency. The juvenile court must find by clear and convincing evidence that (1) at least one of the conditions

CASE DECISION LIST

(Case 110990 continued)

set forth in R. C. 2151.414 (B)(1)(a) through (e) applies, and (2) it is in the best interest of the child to grant permanent custody to the agency. The evidence demonstrated that the child cannot be placed with Mother within a reasonable period of time; Mother failed to demonstrate sufficient benefit from the substance abuse services; establish a plan for sober living; submit to the weekly drug screen requests made by CCDCFS; secure appropriate housing; and complete mental health treatment services. As a result, there is clear and convincing evidence in the record to support the juvenile court's determination that permanent custody be awarded to CCDCFS. Accordingly, the court's decision to grant permanent custody is not against the manifest weight of the evidence and the court did not abuse its discretion in determining that permanent custody of the child be awarded to CCDCFS.