

[Cite as *State v. Jackson*, 2015-Ohio-874.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 101543

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**STATE OF OHIO**

PLAINTIFF-APPELLANT

vs.

**BRUCE R. JACKSON**

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-13-576980-A

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

**RELEASED AND JOURNALIZED:** March 12, 2015

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EILEEN T. GALLAGHER, J.:

{¶1} Plaintiff-appellant, the state of Ohio (“the state”), appeals the sentence imposed upon defendant-appellee, Bruce R. Jackson (“Jackson”), and assigns the following error for our review:

I. Defendant’s sentence is contrary to law because he was subject to the law at the time of his offense. The recent amendments from House Bill 86 do not apply to defendants who committed their offense prior to 1996.

{¶2} Finding no merit to the appeal, we affirm.

### **I. Factual and Procedural History**

{¶3} In September 2013, Jackson was indicted on seven counts of gross sexual imposition, six counts of kidnaping, and five counts of rape. All 18 counts stemmed from Jackson’s crimes against his daughter, occurring between 1980 and 1993. On February 19, 2014, Jackson pleaded guilty to an amended indictment that included one count of gross sexual imposition and five counts of rape. The trial court found Jackson guilty of all six counts.

{¶4} Prior to Jackson’s sentencing hearing, the state argued that Jackson’s plea had to be vacated because he had not been properly advised of the penalties, pursuant to Crim.R. 11, and thus his plea was not knowingly, intelligently, and voluntarily made. The state argued Jackson had been misinformed regarding the possible penalties he would receive pursuant to Am.Sub.H.B. 86 (“H.B. 86”) and its amendments. The state argued Jackson should be sentenced pursuant to the law in effect at the time the crimes were committed and should not benefit from the shorter prison terms enacted in H.B. 86. The issue was briefed, and the parties argued the issue on the record. The trial court found in favor of Jackson, holding that pursuant to *State v. Taylor*, 138 Ohio St.3d 194, 2014-Ohio-460, 5 N.E.3d 612, he could receive the benefit of being sentenced pursuant to H.B. 86.

{¶5} On May 19, 2014, the trial court vacated Jackson’s plea, performed the Crim.R. 11 colloquy anew, and accepted Jackson’s guilty plea on one count of gross sexual imposition and five counts of rape. He was sentenced to a five-year prison term for the gross sexual imposition conviction, to be served concurrently to five, five-year prison terms for each rape conviction. The five, five-year prison terms for the rape convictions were ordered to run consecutively, for an aggregate sentence of 25 years in prison.

## II. Law and Analysis

{¶6} The state argues that Jackson’s sentence is contrary to law because R.C. 1.58(B) dictates that he be sentenced pursuant to the law in effect at the time of his offenses, not pursuant to H.B. 86. The state contends that the trial court erred in conferring upon Jackson the benefit of a more lenient sentence.

{¶7} Jackson argues his sentence is not contrary to law. He argues the trial court properly sentenced him pursuant to the amendments made pursuant to H.B. 86. Jackson argues H.B. 86 is applicable to defendants whose crimes were committed prior to Am.Sub.S.B. No. 2 (“S.B. 2”), 146 Ohio Laws, part IV, 7136, but were convicted and sentenced after the enactment of H.B. 86.

{¶8} The General Assembly is vested with the power to define, classify, and prescribe punishment for offenses committed in Ohio. *Taylor*, 138 Ohio St.3d 194, 2014-Ohio-460, 5 N.E.3d 612, ¶ 12; *State v. Bates*, 118 Ohio St.3d 174, 2008-Ohio-1983, 887 N.E.2d 328, ¶ 12; *State v. Thompkins*, 75 Ohio St.3d 558, 560, 664 N.E.2d 926 (1996).

{¶9} The primary goal of this court in construing a statute is to ascertain and give effect to the explicit language and discernable intent of the legislature. *State v. Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471, ¶ 11. In interpreting a statute, the Ohio Supreme

Court has held that “the intent of the lawmakers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly, and distinctly the sense of the lawmaking body, there is no occasion to resort to other means of interpretation.” *State v. Robinson*, 124 Ohio St.3d 76, 2009-Ohio-5937, 919 N.E.2d 190, ¶ 18, quoting *Slingluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902), paragraph two of the syllabus.

{¶10} The state argues that R.C. 1.58(B) was explicitly excluded from S.B. 2 and that H.B. 86 is an amendment to S.B. 2. Therefore, R.C. 1.58(B) is not applicable to Jackson and in turn he is not eligible to be sentenced under H.B. 86. R.C. 1.58(B) 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.”

{¶11} The Ohio Supreme Court addressed the issue of R.C. 1.58(B)’s application as it pertains to S.B. 2 in *State v. Rush*, 83 Ohio St.3d 53, 697 N.E.2d 634 (1998). The court found that S.B. 2 was inapplicable to defendants who committed their crimes prior to the bill’s enactment but who were convicted and sentenced afterwards, because S.B. 2 explicitly excluded R.C. 1.58(B). The court pointed to S.B. 2’s exclusionary language in Section 5, which states:

The provisions of the Revised Code in existence prior to July 1, 1996, shall apply to a person upon whom a court imposed a term of imprisonment prior to that date and, NOTWITHSTANDING DIVISION (B) OF SECTION 1.58 OF THE REVISED CODE, to a person upon whom a court on or after that date and in accordance with the law in existence prior to that date, IMPOSES a term of imprisonment for an offense that was committed prior to that date.

(Emphasis sic.)

{¶12} In its analysis, the court found the addition of “notwithstanding R.C. 1.58(B)” to be superfluous because S.B. 2 was clearly drafted to apply only to crimes committed on or after its enactment. *Rush* at 56-57. The state concedes that pursuant to *Rush*, and the bill’s

exclusionary language, S.B. 2 is inapplicable to defendants whose crimes were committed prior to 1996 but whose conviction and sentencing occurred after S.B. 2 was enacted.

{¶13} However, 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. H.B. 86 contains instructive language as to its *inclusion* of defendants whose crimes were committed prior to its enactment and prior to S.B. 2, and who were subsequently convicted and sentenced after the enactment of H.B. 86. Section 4 of H.B. 86 states, in relevant part:

SECTION 4. The amendments to \* \* \* division (A) of section 2929.14 of the Revised Code that are made in this act 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.

(Emphasis added.)

{¶14} The Ohio Supreme Court, in *Taylor*, 138 Ohio St.3d 194, 2014-Ohio-460, 5 N.E.3d 612, held that:

R.C. 1.58(B) provides that if the penalty or punishment for an offense is reduced by amendment of a statute and if sentence has not already been imposed, then the amended reduced penalty or punishment shall be imposed. Thus, in accordance with R.C. 1.58(B) and the uncodified portion of Section 4 of H.B. 86, the determining factor on whether the provisions of H.B. 86 apply to an offender is not the date of the commission of the offense but rather whether sentence has been imposed.

*Id.* at ¶ 19.

{¶15} The Ohio Supreme Court held that such an inclusive interpretation of Section 4 of H.B. 86 clearly supports the legislative intent behind H.B. 86 and its amendments.

In this regard, the legislature intended that the amendments apply to all offenders, regardless of when their offenses were committed, because it conditioned application of the reduced penalty — which arises by virtue of the reduced classification — on whether or not the offenders had been previously sentenced.

This conclusion accords with the goals of the General Assembly 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. Ohio Legislative Service Commission, Fiscal Note & Local Impact Statement to Am.Sub.H.B. 86, at 3 (Sept. 30, 2011), available at [www.legislative.state.oh.us/fiscalnotes.cfm?ID=129\\_HB\\_86&ACT=As%20Enrolled](http://www.legislative.state.oh.us/fiscalnotes.cfm?ID=129_HB_86&ACT=As%20Enrolled) (accessed Dec. 17, 2013).

*Taylor* at ¶ 17; *see also State v. Limoli*, 140 Ohio St.3d 188, 2014-Ohio-3072, 16 N.E.3d 641, ¶ 4 (H.B. 86 applies to defendant convicted of drug possession despite the crime occurring prior to the enactment of H.B. 86.).

{¶16} Most recently, this court has held that defendants whose crimes occurred prior to the enactment of S.B. 2, but who were convicted and sentenced after the enactment of H.B. 86, are eligible for the less stringent sentencing statutes contained in H.B. 86. *See State v. Girts*, 8th Dist. Cuyahoga No. 101075, 2014-Ohio-5545, ¶ 17; *State v. Jackson*, 8th Dist. Cuyahoga No. 100877, 2014-Ohio-5137, ¶ 37; *State v. Thomas*, 8th Dist. Cuyahoga No. 101202, 2015-Ohio-415, ¶ 48.

{¶17} In terms of Jackson's sentence, this court has previously held that although neither Section 3 nor Section 4 of H.B. 86 specify that rape, and in this case gross sexual imposition, are covered offenses under H.B. 86, Section 4 states that H.B. 86 amendments apply to defendants penalized under R.C. 2929.14(A). *Jackson* at ¶ 36; *Thomas* at ¶ 47.

{¶18} R.C. 2929.14(A), which governs basic prison terms, states in relevant part:

[I]f the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender pursuant to this chapter, the court shall impose a definite prison term that shall be one of the following:

(1) For a felony of the first degree, the prison term shall be three, four, five, six, seven, eight, nine, ten, or eleven years.

\* \* \*

(3) (a) For a felony of the third degree that is a violation of section 2903.06, 2903.08, 2907.03, 2907.04, or 2907.05 of the Revised Code or that is a violation of section 2911.02 or 2911.12 of the Revised Code if the offender previously has been convicted of or pleaded guilty in two or more separate proceedings to two or more violations of section 2911.01, 2911.02, 2911.11, or 2911.12 of the Revised Code, the prison term shall be twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, forty-eight, fifty-four, or sixty months.

{¶19} Jackson pleaded guilty to one count of gross sexual imposition in violation of R.C. 2907.05(A)(3), a felony of the third degree, and five counts of rape in violation of R.C. 2907.02(A)(2), felonies of the first degree. Pursuant to R.C. 2929.14(A), as amended by H.B. 86, the trial court sentenced Jackson to a five-year term for the gross sexual imposition conviction and five-year terms on each of the five rape convictions. We find the trial court properly applied H.B. 86 sentencing guidelines to Jackson's sentence. Accordingly, the state's sole assignment of error is overruled.

### **III. Conclusion**

{¶20} The trial court did not err in sentencing Jackson pursuant to the most recent amendments to H.B. 86. Jackson's sentence is not contrary to law.

{¶21} Judgment affirmed.

It is ordered that appellee recover from 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.

EILEEN T. GALLAGHER, JUDGE

TIM McCORMACK, P.J., and  
MARY J. BOYLE, J., CONCUR