

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

STATE OF OHIO,	:	CASE NO. CA2026-02-009
Appellee,	:	
vs.	:	<u>OPINION AND</u>
	:	<u>JUDGMENT ENTRY</u>
RIQUO D. DUNCAN,	:	9/21/2026
Appellant.	:	
	:	

CRIMINAL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2024 CR 0332

Mark J. Tekulve, Clermont County Prosecuting Attorney, and Zachary K. Garrison, Assistant Prosecuting Attorney, for appellee.

W. Stephen Haynes, Clermont County Public Defender, and Matthew V. Faris, Assistant Public Defender, for appellant.

OPINION

SIEBERT, J.

{¶ 1} Riquo D. Duncan appeals the sentence imposed by the Clermont County Court of Common Pleas after Duncan pled guilty to two counts of attempted aggravated trafficking in drugs. On appeal, Duncan argues the trial court erred in advising him that

he was not eligible for a reduction of his minimum indefinite sentence. The State also concedes the trial court erred. However, we conclude the trial court did not err because the applicable statutes are unambiguous that Duncan's prison sentence is mandatory and cannot be reduced under various statutory procedures. After reviewing caselaw from our sister districts on this same legal issue, we find our decision to be in conflict with precedent from the Eighth District Court of Appeals and certify the issue discussed herein to the Supreme Court of Ohio.

Background

{¶ 2} The underlying facts of this case for purposes of this appeal are simple. After negotiating a plea agreement with the State, Duncan pled guilty to two counts of attempted aggravated trafficking in drugs (second-degree felonies). All other originally indicted offenses and specifications were dismissed. The trial court imposed an indefinite, mandatory prison sentence of nine to 11.5 years. While providing Duncan with statutory advisements required for this indefinite sentence, the trial court also stated it would not discuss Duncan's eligibility to earn a reduction of his minimum prison term because Duncan's sentences were mandatory.

{¶ 3} Duncan now appeals.

First Assignment of Error – Mandatory Sentences and Earned Reduction of Minimum Prison Term

Standard of Review and Statutory Interpretation

{¶ 4} We review this matter de novo, as it involves a question of statutory interpretation. *Hicks v. Clermont Cnty. Republican Cent. Comm.*, 2025-Ohio-2913, ¶ 97 (12th Dist.). See also *State v. Grays*, 2023-Ohio-2482, ¶ 11 (8th Dist.); *State v. Wright*, 2026-Ohio-1714, ¶ 20 (5th Dist.) (applying de novo review to the same statutory interpretation question). Generally speaking, when statutory language is unambiguous

and its meaning is clear, we must rely on the words of the statute the General Assembly wrote. *State v. Logan*, 2025-Ohio-1772, ¶ 8. "[T]he question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact." *Id.*, quoting *Slingluff v. Weaver*, 66 Ohio St. 621 (1902), paragraph two of the syllabus. Moreover, "[s]tatutes relating to the same subject matter should, if possible, be construed harmoniously." *Snodgrass v. Harris*, 2024-Ohio-3130, ¶ 17, citing *State ex rel. Thurn v. Cuyahoga Cty. Bd. of Elections*, 72 Ohio St.3d 289, 294 (1995), Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 252-255 (2012).

Applicable Law

Offense Statutes

{¶ 5} Duncan pled guilty to two charges: (1) attempted aggravated trafficking in drugs (methamphetamine) exceeding five times the bulk amount but less than 50 times the bulk amount), and (2) attempted aggravated trafficking in drugs (fentanyl-related compound) equaling or exceeding ten grams but less than 20 grams. R.C. 2923.02(A); R.C. 2925.03(A)(2), (C)(1)(d), (C)(9)(e). Each of these crimes are felonies of the second degree and require the court to impose a "mandatory prison term." R.C. 2925.03(A)(2), (C)(1)(d), (C)(9)(e).

Sentencing Statutes

{¶ 6} What is commonly referred to as the Reagan Tokes Law "provides for indefinite sentencing for offenders convicted of first- or second-degree felonies for which life imprisonment is not an available sentence." *State v. Hacker*, 2023-Ohio-2535, ¶ 7, citing R.C. 2929.14(A)(1)(a) and (2)(a). When a defendant is convicted of a felony that falls under this provision, the trial court sets a minimum term—three to 11 years for first-degree felony offenses and two to eight years for second-degree felony offenses—and a maximum prison term that is 1.5 times the minimum term. *Id.* citing R.C. 2929.14(A)(1)(a)

and (2)(a); R.C. 2929.14(B)(1).

{¶ 7} A separate sentencing statute "addresses mandatory prison terms and lists offenses for which a sentencing court is obligated to impose a prison term." *State v. Johnson*, 2008-Ohio-69, ¶ 9, citing R.C. 2929.13(F) (the "Mandatory-Sentence Provision"). The Mandatory-Sentence Provision provides that for a variety of specified offenses, trial courts "*shall* impose a prison term under . . . [Reagan Tokes (i.e. an indefinite sentence)] . . . [and] *shall not* reduce the term" under various sections of the Ohio Revised Code, including Chapter 2967 of the Ohio Revised Code (discussed below), unless a specific statutory exception applies. (Emphasis added.) R.C. 2929.13(F). Among those crimes identified within the Mandatory-Sentence Provision are various types of homicides and sexual offenses, repeat criminal offenses, as well as "first, second, or third degree felony drug offense[s]" including attempted aggravated trafficking in drugs. *Id.* at (F)(5); R.C. 2925.03; *Johnson* at ¶ 10, citing R.C. 2929.13(F)(1) and (3) through (14). See *also State v. Taylor*, 2007-Ohio-1950, ¶ 17 (holding "an individual convicted of an attempted drug-abuse offense is subject to [applicable] mandatory sentencing provisions" of the Revised Code). The Mandatory-Sentence Provision expressly "requires the imposition of a mandatory prison term" for such drug offenses. *Id.*

{¶ 8} Yet another Ohio law states that "[w]hen 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." R.C. 2967.271(B) (the "Earned Minimum Reduction Statute"). The Earned Minimum Reduction Statute, "do[es] not apply with respect to an offender serving a non-life felony indefinite prison term for a sexually oriented offense . . ." R.C. 2967.271(F)(8). A detailed understanding of proceedings under the Earned Minimum Reduction Statute is not

necessary to address the issue on appeal, but generally speaking, when the director of the department of rehabilitation and corrections recommends that an offender's sentence be reduced "based on exceptional conduct or positive adjustment to incarceration," the trial court may then reduce the offender's minimum prison term. *Wright*, 2026-Ohio-1714 at ¶¶ 23-24 (5th Dist.), citing R.C. 2967.271. "If denied, the original minimum term remains in effect." *Id.*

State v. Nicholson and State v. Wright

{¶ 9} Two of our sister districts examined the interplay of these sentencing statutes but came to differing conclusions over whether offenders are eligible to earn a reduction to a minimum prison term imposed under Reagan Tokes despite the fact the prison term is described as "mandatory." See generally *State v. Nicholson*, 2025-Ohio-5411 (8th Dist.) citing generally *Grays*, 2023-Ohio-2482 (8th Dist.); *Wright*, 2026-Ohio-1714 (5th Dist.).

{¶ 10} In *Nicholson*, the Eighth District Court of Appeals considered the appeal of a defendant convicted of a first-degree drug trafficking felony with an indefinite sentence of four to six years. *Id.* at ¶¶ 1-2. Like in Duncan's appeal here, the trial court did not advise Nicholson he was eligible to earn a reduction of his minimum prison term. *Id.* at ¶ 3. The Eighth District reversed the sentence, stating "[t]he 'mandatory prison term' language under [the Mandatory-Sentence Provision] means that a trial court is required to impose a prison term as the trial court did in this case but does not necessarily mean that the prison term is mandatory in the sense that it cannot be reduced through [the Earned Minimum Reduction Statute] or judicial release." *Id.* at ¶ 7.

{¶ 11} The Eighth District's legal reasoning for *Nicholson*'s outcome is more fully articulated in an en banc decision issued two years prior to *Nicholson*. See generally, *Grays*, 2023-Ohio-2482 (8th Dist.). In that case, the court concluded "the broad, exclusory

language of [the Mandatory-Sentence Provision] conflicts or is otherwise inconsistent with the carefully constructed exception contained in [the Earned Minimum Reduction Statute]" because while the Mandatory-Sentence Provision "expressly prohibits certain offenders who are serving nonlife, indefinite prison terms from reducing their minimum prison term" the Earned Minimum Reduction Statute "expressly grants the same offenders access to" its term reducing benefits if the offense was not a sexually oriented offense. *Id.* at ¶ 18. The court stated that "any attempt to reconcile the conflicting statutes would greatly expand the number of offenders who would be rendered ineligible" to reduce their minimum sentence while also being subject to the "more punitive" aspects of proceedings under the Earned Minimum Reduction Statute after their minimum prison term expired. *Id.* at ¶ 21.

{¶ 12} Put simply, the Eighth District concluded that Reagan Tokes "only prevents offenders serving a nonlife indefinite prison term for a sexually oriented offense from earning sentencing reductions contemplated under [the Earned Minimum Reduction Statute]." *Id.* at ¶ 27. As a result, the *Nicholson* court concluded that the defendant's first-degree drug offense felony was eligible for an earned minimum reduction. *Nicholson* at ¶ 9.

{¶ 13} The Fifth District Court of Appeals took a different approach for a defendant convicted of a second-degree aggravated possession of drugs felony. *Wright*, 2026-Ohio-1714 (5th Dist.). In that case, the trial court "imposed a mandatory sentence of a minimum of seven years and a potential maximum of ten and one-half years. The trial court also informed Wright that he would be ineligible for any reduction to that sentence." *Id.* at ¶ 5.

{¶ 14} On appeal, the Fifth District upheld this sentence. In its view, the Mandatory-Sentence Provision "does not merely require that a prison term be imposed. It goes further and expressly prohibits reducing that term through a broad range of mechanisms,

including 'any other provision of Chapter 2967'" which contains the Earned Minimum Reduction Statute. *Id.* at ¶ 48. While the Earned Minimum Reduction Statute "establishes a general earned reduction mechanism," the Mandatory-Sentence Provision "carves out a clear exception for mandatory terms and removes them from all reduction schemes." *Id.* at ¶ 39.

{¶ 15} Therefore, the Fifth District concluded that after "[r]eading the statutes together, [the Earned Minimum Reduction Statute] applies only where the underlying sentence is legally reducible." *Id.* The Earned Minimum Reduction Statute's express reference to sexually oriented offenses amounted to a "categorical exception" that had no impact on the Mandatory-Sentence Provision because the former "applies uniformly to this entire class of offenders and contains no language suggesting a distinction between mandatory and non-mandatory components of those sentences." *Id.* at ¶ 39-40. Ultimately, the Fifth District concluded, "If the General Assembly intended [the Earned Minimum Reduction Statute] to apply to mandatory sentences, it would have said so. It did not . . . [and therefore] made a deliberate policy choice that certain offenders serve fixed, nonreducible terms." *Id.* at ¶ 40-41.

Analysis

{¶ 16} Which approach are we to take in Duncan's case for his second-degree felony drug offenses? We conclude the Fifth District's approach articulated in *Wright* correctly and harmoniously construes these statutes. The statute classifying Duncan's convictions for attempted aggravated trafficking in drugs (methamphetamine and fentanyl-related compound), requires the court to impose a "mandatory prison term." R.C. 2923.02(A); R.C. 2925.03(A)(1), (C)(1)(d), (C)(9)(e).¹ The Mandatory-Sentence Provision

1. Similarly, Nicholson's and Wright's felony convictions required a "mandatory prison term" under the relevant classifications. See R.C. 2925.03(A)(2), (C)(1)(e) (Trafficking - *Nicholson*); R.C. 2925.11(A),

echoes this mandate, stating that for second-degree drug offenses, trial courts "shall impose a prison term under . . . [Reagan Tokes (i.e. an indefinite sentence)] . . . [and] shall not reduce the term" under, as applicable here, Chapter 2967 of the Ohio Revised Code, which includes the Earned Minimum Reduction Statute. We agree with the Fifth District that the Earned Minimum Reduction Statute's "categorical exclusion" sex offenders does not "override or create an exception to" the Mandatory-Sentence Provision's lengthy and expansive list of offenses whose prison terms the General Assembly specifically stated cannot be reduced by any statutory scheme (unless a specific exception applies). *Wright* at ¶ 55. We therefore conclude that Duncan's minimum sentence may not be reduced under the Earned Minimum Reduction Statute, and the trial court did not err in advising Duncan as such.

{¶ 17} Duncan's sole assignment of error is overruled.

Certified Conflict

{¶ 18} Under Section 3(B)(4), Article IV of the Ohio Constitution:

Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by another court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination.

{¶ 19} The Ohio Supreme Court distilled three conditions from that constitutional provision in *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594, 1993-Ohio-223. First, our judgment must conflict with the judgment of another district "upon the same question." *Id.* at 596. Second, the conflict must be "on a rule of law—not facts." *Id.* Third, the rule of law must be clearly set forth. *Id.*

{¶ 20} Consistent with these authorities, we conclude sua sponte that the three

(C)(1)(c) (Aggravated Possession of Drugs – *Wright*).

Whitelock requirements for conflict are satisfied here. See *State v. Daniel*, 2022-Ohio-1348, ¶ 30 (6th Dist.) (certifying conflict sua sponte). First, our judgment herein is in conflict with the Eighth District Court of Appeals' judgment in *Nicholson* on the same question. Our judgment here affirms the mandatory nature of the trial court's sentence, finding that Duncan's sentence could not be reduced pursuant to the Earned Minimum Reduction Statute. R.C. 2967.271(F). In contrast, *Nicholson* vacated the mandatory nature of the defendant's sentence, finding the defendant's sentence could be reduced pursuant to the Earned Minimum Reduction Statute. *Nicholson*, 2025-Ohio-5411 at ¶ 9 (8th Dist.). Second, the judgments conflict upon the same question on a rule of law, as defined in our certified question that follows, not on the facts relevant to each. Third, we clearly set forth the rule of law in question by certifying the following question to the Supreme Court of Ohio: "Does the Earned Minimum Reduction Statute—R.C. 2967.271(F)—apply to sentences imposed under the Mandatory-Sentence Provision—R.C. 2929.13(F)?" The parties are directed to S.Ct.Prac.R. 5.03 and S.Ct.Prac.R. 8.01 for guidance.

{¶ 21} Judgment affirmed.

PIPER, P.J., and M. POWELL, J., concur.

JUDGMENT ENTRY

The assignment of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Clermont County Court of Common Pleas for execution upon this judgment and that a certified copy of this Opinion and Judgment Entry shall constitute the mandate pursuant to App.R. 27.

It is further ordered that having found this Opinion and Judgment Entry to be in direct conflict with the Eighth Appellate District's opinion in *State v. Nicholson*, 2025-Ohio-5411, we certify a conflict to the Supreme Court of Ohio on the following question: Does the Earned Minimum Reduction Statute—R.C. 2967.271(F) apply to sentences imposed under the Mandatory-Sentence Provision—R.C. 2929.13(F)?

Costs to be taxed in compliance with App.R. 24.

/s/ Robin N. Piper, Presiding Judge

/s/ Mike Powell, Judge

/s/ Melena S. Siebert, Judge