[Cite as *State v. Ruggles*, 2023-Ohio-2277.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

STATE OF OHIO,	:	Case No. 22CA1
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	DECISION AND JUDGMENT ENTRY
	:	
JESSICA D. RUGGLES,	:	
	:	**RELEASED: 06/27/2023**
Defendant-Appellant.	:	

APPEARANCES:

Autumn D. Adams, Toledo, Ohio, for Appellant.

Brigham M. Anderson, Lawrence County Prosecuting Attorney, and Andrea M. Kratzenberg, Assistant Lawrence County Prosecuting Attorney, Ironton, Ohio, for Appellee.

Wilkin, J.

{¶1} Jessica D. Ruggles ("Ruggles") appeals the Lawrence County Court of Common Pleas judgment entry that accepted her guilty plea to trafficking in a fentanyl-related compound in violation of R.C. 2925.03(A)(2) and (C)(9)(h), a first-degree felony, and sentenced her to an indefinite prison term of 8 to 12 years that was recommended by the parties. On appeal, Ruggles alleges that a minimum of eight years in prison is inconsistent with the purposes and principals of sentencing because she does not have a criminal record. The state filed a response alleging the trial court's judgment should be affirmed because a minimum eight-year prison term is authorized by law, recommended by the parties, and was imposed by the judge. Because the jointly recommended prison term of 8 to 12 years imposed on Ruggles was authorized by law under R.C.

2953.08(D)(1), it was not subject to review. Therefore, we affirm the trial court's judgment entry.

BACKGROUND

{¶2} On December 15, 2020, the state charged Ruggles with trafficking in a fentanyl-related compound in violation of R.C. 2925.03(A)(2) and (C)(9)(h) and possession of a fentanyl-related compound in violation of R.C. 2925.11(A) and (C)(11)(g), both first-degree felonies. She initially pleaded not guilty. However, on August 21, 2021, the trial court held a combined change of plea and sentencing hearing. The parties represented to the court that they had reached a plea agreement that included a recommended sentence. Pursuant to the agreement, Ruggles would plead guilty to the trafficking charge, the state would dismiss the possession charge, and the state would not oppose judicial release if she served with good behavior. Further, Ruggles would pay a $10,000 fine, and the parties would recommend a prison term of 8 to 12 years. In response to the issue of judicial release, the court advised Ruggles that if an applicant qualifies under the statute, their Institutional Summary Report is "clean", and the state does not object, then it "has never denied one." The court then informed Ruggles that if she met those criteria, she might be released in five or six years.

{¶3} The court then engaged in a colloquy with Ruggles to ensure that her plea was voluntary, intelligent, and knowing, which included advising her that it was not bound by the recommended sentence, and it potentially could sentence her to an indefinite prison term of 11 to 16 ½ years, which Ruggles

acknowledged. She then pleaded guilty to the trafficking charge and the court accepted her plea.

{¶4} The court continued to sentencing. Defense counsel asked the court to incorporate the recommended sentence into its order. He also reminded the court that Ruggles had "no significant criminal history" and had discussed with Ruggles that with good behavior she may be granted judicial release after five or six years. The court then sentenced Ruggles to the agreed prison term of 8 to 12 years and other sanctions that are not pertinent to this appeal. It is this judgment that Ruggles appeals.

ASSIGNMENT OF ERROR

A MINIMUM OF EIGHT YEARS OF INCARCERATION IS INCONSISTENT WITH THE PRINCIPLES AND PURPOSES OF SENTENCING BECAUSE RUGGLES HAS NO CRIMINAL RECORD AND SHOWED GENUINE REMORSE

{¶5} Ruggles argues that her sentence is contrary to law because it is inconsistent with the principals and purposes of sentencing. Quoting the Supreme Court's opinion in *State v. Jones*, she acknowledges that there is " " '[n]othing in R.C. 2953.08(G)(2) permits an appellate court to independently weigh the evidence in the record and substitute its judgment for that of the trial court concerning the sentence that best reflects compliance with R.C. 2929.11 and 2929.12[.]' " 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649, ¶ 42.

{¶6} Nevertheless, Ruggles maintains that we still have "authority to review her sentence for compliance with R.C. 2929.11 and R.C. 2929.12 because *Jones* denies her the right to a meaningful appellate review and equal

protection under the law." She claims that *Jones* has "effectively ended appellate review of a vast majority of criminal sentences in Ohio." Ruggles' argument appears to suggest that the *Jones* opinion is unconstitutional because it violates her due process and equal protection rights.

{¶7} The state filed a response alleging the trial court's judgment should be affirmed because a minimum eight-year prison term is authorized by law, recommended by the parties, and was imposed by the judge.

LAW

{¶8} 2953.08(G)(2), sets out the standard of review for an appeal of a sentence for a felony offense. It provides that

> an appellate court may increase, reduce, modify, or vacate and remand a challenged felony sentence if the court clearly and convincingly finds either:
> "(a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;
> (b) That the sentence is otherwise contrary to law."

State v. Bertram, 4th Dist. Scioto No. 21CA3950, 2022-Ohio-2488, ¶53, quoting R.C. 2953.08(G)(2).

{¶9} However, R.C. 2953.08(D)(1) provides: "A sentence imposed upon a defendant is not subject to review under this section if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge."

{¶10} "The General Assembly intended a jointly agreed-upon sentence to be protected from review precisely because the parties agreed that the sentence is appropriate. Once a defendant stipulates that a particular sentence is justified,

the sentencing judge no longer needs to independently justify the sentence." *State v. Porterfield,* 106 Ohio St.3d 5, 2005-Ohio-3095, 829 N.E.2d 690, ¶ 25. Consequently, in *Porterfield* the trial court's failure to comply with R.C. 2929.14(E)(4) in ordering consecutive service of the appellant's life sentences did not prevent the sentence from being authorized by law thereby precluding appellate review. *Id*.

{¶11} "[T]o be 'authorized by law' under R.C. 2953.08(D)(1), a sentence must comport with all applicable *mandatory* sentencing provisions." (Emphasis added). *State v. Sergent*, 148 Ohio St.3d 94, 2016-Ohio-2696, 69 N.E.3d 627, ¶ 28. A sentence that "falls within the statutorily set range of available sentences, or, in other words, the sentence imposed does not exceed the maximum term prescribed by the statute for the offense" is authorized by law. *State v. Owens*, 7th Dist. Jefferson No. 06 JE 50, 2008-Ohio-3071, ¶ 7, citing *State v. Gray,* 7th Dist. No. 02 BA 26, 2003-Ohio-0805, at ¶ 10. We have also recognized that "a trial court has a mandatory duty to *consider* the relevant statutory factors under R.C. 2929.11 and 2929.12[.]" (Emphasis added.) *State v. Poole*, 4th Dist. Adams No. 21CA1151, 2022-Ohio-2391, ¶ 17. *See also State v. Allen*, 4th Dist. Pickaway No. 19CA31, 2021-Ohio-648, ¶ 13 ("Unlike other felony sentencing statutes, such as R.C. 2929.14(C)(4), which require a trial court to make certain 'findings' before imposing consecutive sentences, a trial court is required only to 'carefully consider' the factors in R.C. 2929.11 and R.C. 2929.12 when imposing sentence, and is not required to make any 'findings,' or state 'reasons' regarding those considerations.").

{¶12} Consequently, if a court imposes a recommended sentence, has complied with other applicable mandatory sentencing provisions, including that it "considered" the factors in R.C. 2929.11 and 2929.12, then the sentence is "authorized by law." *State v. Bates*, 3rd Dist. Hardin No. 6-22-10, 2022-Ohio-4688, ¶ 15; *State v. McFarland*, 11th Dist. Lake No. 2013-L-061, 2014-Ohio-2883, ¶ 17-21.

ANALYSIS

{¶13} It is undisputed that the parties jointly recommended a prison term of 8 to 12 years, which the court imposed. The only question is whether that sentence is "authorized by law" by complying with any mandatory sentencing requirements that would preclude appellate review.

{¶14} Ruggles pleaded guilty to trafficking in fentanyl-related compound in excess of 100 grams in violation of R.C. 2925.03(A)(2) and (C)(9)(h), which provides that "the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree." Under Reagan Tokes Act, the maximum sentence Ruggles could receive was 11 to 16 years in prison. *State v. Rothwell*, 4th Dist. Adams No. 20CA1122, 2021-Ohio-1700, ¶ 15, citing R.C. 2929.14(A)(1)(a) and R.C. 2929.144(B)(1). Because Ruggles' indefinite prison term of 8 to 12 years is within the range of permissible prison terms for her offense, Ruggles' sentence is "authorized by law." *Owens*, 7th Dist. Jefferson No. 06 JE 50, 2008-Ohio-3071, ¶ 7.

{¶15} Further, at Ruggles' sentencing hearing and in its sentencing entry, the trial court indicated that it "weigh[ed]" the purposes and principals of felony

sentencing set out in R.C. 2929.11 and the seriousness and recidivism factors set out in R.C. 2929.12 when imposing Ruggles' prison sentence. Therefore, we find that the sentence is also "authorized by law" under R.C. 2929.11 and R.C. 2929.12. *Bates*, 3rd Dist. Hardin No. 6-22-10, 2022-Ohio-4688 at ¶ 15; *McFarland*, 11th Dist. Lake No. 2013-L-061, 2014-Ohio-2883 at ¶ 17-21.

{¶16} Because Ruggles' jointly recommended sentence is "authorized by law," and was imposed by the sentencing judge, it is not subject to review. *Sergent*, 148 Ohio St.3d 94, 2016-Ohio-2696, 69 N.E.3d 627, ¶ 15.[1]

CONCLUSION

{¶17} Having found that Ruggles' sentence is not subject to appellate review, we affirm the trial court's judgment entry.

JUDGMENT AFFIRMED.

[1] Although Ruggles' appeal is not subject to our review, we note that her argument appears to suggest that *Jones* is unconstitutional. As a state appellate court, we "cannot overrule an Ohio Supreme Court decision or declare an Ohio Supreme Court decision unconstitutional." *State v. Sheets*, 12th Dist. Clermont No. CA2006-04-032, 2007-Ohio-1799, ¶ 16. *See also State v. Leasure*, 6th Dist. Lucas No. L-07-1359, 2009-Ohio-986, ¶ 8 ("As a state intermediate appellate court, we are without authority to reverse the Ohio Supreme Court's decision[.]"); *Darrah v. Baumberger*, 7th Dist. Monroe No. 15 MO 0002, 2017-Ohio-8025, ¶ 24 ("An appellate court is an intermediate court and is therefore bound by Ohio Supreme Court decisions."); *Zakel v. State*, 8th Dist. Cuyahoga No. 111379, 2022-Ohio-4637, ¶ 7 ("[A]s an appellate court, we are a midlevel court of review. As such we do not have the authority to review or overturn decisions of the Ohio Supreme Court."). Consequently, even if Ruggles' appeal was subject to our review, we do not have the authority to overturn *Jones*.

JUDGMENT ENTRY

It is ordered that the JUDGMENT ENTRY IS AFFIRMED and that appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Lawrence County Court of Common Pleas to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

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

Abele, J. and Hess, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.