

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JOHN BEATTY

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. William B. Hoffman, J.

Hon. Earle E. Wise, Jr., J.

Case No. CT2020-0015

O P I N I O N

CHARACTER OF PROCEEDINGS:

Appeal from the Muskingum County
Court of Common Pleas, Case Nos.
CR2019-0035 & CR2019-0400

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

July 8, 2022

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Muskingum County, Ohio

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Hoffman, J.

{¶1} This case comes before this Court from the judgment entered by the Ohio Supreme Court on April 27, 2022, remanding this case for this Court to consider whether the challenged provisions of the Reagan Tokes Law are constitutional. Defendant-appellant is John Beatty. Appellee is the state of Ohio.

STATEMENT OF FACTS AND CASE

{¶2} Appellant was indicted by the Muskingum County Grand Jury in case number CR2019-0035 with aggravated burglary, aggravated robbery, felonious assault on a peace officer, failure to comply, two counts of vandalism, and possession of criminal tools, with a specification for forfeiture of the Toyota Tacoma truck.

{¶3} Appellant was initially found incompetent to stand trial. The court ordered Appellant to be placed in a behavioral health facility in Athens, Ohio, for evaluation. While there, he grabbed an employee of the facility, took the employee's keys, and escaped the facility. Appellant was indicted by the Muskingum County Grand Jury in case number CR2019-0400 with one count of escape.

{¶4} Appellant was restored to competency and the cases proceeded to a negotiated plea. Appellant entered pleas of guilty in case number CR2019-0035 to aggravated burglary, assault on a peace officer (amended from felonious assault on a peace officer), one count of vandalism, and possession of criminal tools, including the forfeiture specification. All other charges were dismissed. The trial court sentenced him to eight years incarceration for aggravated burglary, eighteen months incarceration for assault on a peace officer, twelve months incarceration for vandalism, and twelve months incarceration for possession of criminal tools, to be served concurrently to each other, but consecutively to the sentence imposed in CR2019-0400. Appellant also entered a plea of

guilty to escape in case number CR2019-0400. The trial court sentenced him pursuant to the Reagan Tokes Act to a term of incarceration of 3-4½ years, to be served consecutively to the sentence imposed in CR2019-0035, for an aggregate term of incarceration of 11-12½ years. Appellant assigned the following errors on appeal to this Court:

I. JOHN BEATTY DID NOT KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY PLEAD GUILTY IN CR2019-0035 OR CR2019-0400, IN VIOLATION OF HIS DUE PROCESS RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND SECTION SIXTEEN, ARTICLE ONE OF THE OHIO CONSTITUTION.

II. THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING BEATTY'S TWO MOTIONS TO DISMISS HIS TRIAL COUNSEL, IN VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND SECTION 10, ARTICLE I OF THE OHIO CONSTITUTION.

III. THE TRIAL COURT ERRED IN FINDING THAT BEATTY WAS COMPETENT TO PROCEED WITH THE LEGAL MATTERS AGAINST HIM, IN VIOLATION OF HIS DUE PROCESS RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

IV. AS AMENDED BY THE REAGAN TOKES ACT, THE REVISED CODE'S SENTENCES FOR FIRST AND SECOND DEGREE QUALIFYING FELONIES VIOLATES THE CONSTITUTIONS OF THE UNITED STATES AND OHIO.

V. THE TRIAL COURT PLAINLY ERRED BY FAILING TO MERGE BEATTY'S OFFENSE OF POSSESSION OF CRIMINAL TOOLS AND VANDALISM.

VI. JOHN BEATTY RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL, IN VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND SECTION 10, ARTICLE I OF THE OHIO CONSTITUTION.

{¶15} This Court found the issue of the constitutionality of the Reagan Tokes Law to be not yet ripe for review, and overruled Appellant's remaining assignments of error. *State v. Beatty*, 5th Dist. Muskingum No. CT2020-0015, 2021-Ohio-355. This case came before the Ohio Supreme Court. The Ohio Supreme Court reversed this Court's decision finding the issue of constitutionality of the Reagan Tokes Law not ripe for review, and remanded to this Court with instructions to issue a ruling on the constitutionality of the Reagan Tokes Law. *In re Cases Held for the Decision in State v. Maddox*, 2022-Ohio-1352.

IV.

{¶16} In his fourth assignment of error, Appellant challenges the presumptive release feature of R.C. 2967.271, arguing it violates his constitutional rights to trial by jury

and due process of law, and further violates the constitutional requirement of separation of powers.

{¶7} For the reasons stated in the dissenting opinion of The Honorable W. Scott Gwin in *State v. Wolfe*, 5th Dist. Licking No. 2020CA00021, 2020-Ohio-5501, 2020 WL 7054428, we find the Reagan Tokes Law does not violate Appellant's constitutional rights to trial by jury and due process of law, and does not violate the constitutional requirement of separation of powers. We hereby adopt the dissenting opinion in *Wolfe* as the opinion of this Court. In so holding, we also note the sentencing law has been found constitutional by the Second, Third, and Twelfth Districts, and also by the Eighth District sitting en banc. See, e.g., *State v. Ferguson*, 2nd Dist. Montgomery No. 28644, 2020-Ohio-4153, 2020 WL 4919694; *State v. Hacker*, 3rd Dist., 2020-Ohio-5048, 161 N.E.3d 112; *State v. Guyton*, 12th Dist. Butler No. CA2019-12-203, 2020-Ohio-3837, 2020 WL 4279793; *State v. Delvallie*, 8th Dist., 2022-Ohio-470, 185 N.E.3d 536.

{¶8} The fourth assignment of error is overruled.

VI.

{¶9} In his second assignment of error, Appellant argues his trial counsel was ineffective by failing to raise the constitutionality of R.C. 2967.271 in the trial court.

{¶10} A properly licensed attorney is presumed competent. *State v. Hamblin*, 37 Ohio St.3d 153, 524 N.E.2d 476 (1988). Therefore, in order to prevail on a claim of ineffective assistance of counsel, Appellant must show counsel's performance fell below an objective standard of reasonable representation and but for counsel's error, the result of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d

373 (1989). In other words, Appellant must show counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. *Id.*

{¶11} Because we have found R.C. 2967.271 to be constitutional, Appellant has not demonstrated prejudice from counsel's failure to raise the claim in the trial court.

{¶12} The sixth assignment of error is overruled.

{¶13} The judgment of the Muskingum County Common Pleas Court is affirmed.

By: Hoffman, J.

Gwin, P.J. and

Wise, Earle, J. concur

