

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

ERIK ELIJAH JENKINS,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 22 MA 0107

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 21 CR 159

BEFORE:

Cheryl L. Waite, Carol Ann Robb, Judges, and William A. Klatt, Judge of the
Tenth District Court of Appeals, Sitting by Assignment (Retired).

JUDGMENT:

Affirmed.

Atty. Gina DeGenova, Mahoning County Prosecutor and *Atty. Edward A. Czopur*,
Assistant Prosecutor, for Plaintiff-Appellee

Atty. Martin E. Yavorcik, for Defendant-Appellant

Dated: March 19, 2024

WAITE, J.

{¶1} Appellant Erik Jenkins is appealing his sentence for attempted murder. Appellant pleaded guilty to the charge based on a Crim.R. 11 plea agreement. He was immediately sentenced to an indefinite sentence of six to nine years in prison, as authorized by statutory changes under the 2019 Reagan Tokes Act. Appellant argues that the indefinite part of his sentence is unconstitutional. Appellant argues that the trial court judge was only permitted to sentence him to six years in prison rather than six to nine years in prison. Appellant argues that only a jury could find the facts needed to enhance the sentence beyond six years, and therefore, the Reagan Tokes Act, which allows enhanced indefinite sentences, violated his right to a jury trial. Appellant bases his argument on similar arguments made to invalidate maximum and consecutive sentencing in Ohio pursuant to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, and *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). The Ohio Supreme Court recently ruled on the issue raised by Appellant and found that the Reagan Tokes Act does not violate the right to jury trial. *State v. Hacker*, 2023-Ohio-2535, ¶ 28. Therefore, Appellant's sole assignment of error is overruled and the judgment of the trial court is affirmed.

Facts and Procedural History

{¶2} On April 4, 2021, Appellant was indicted for murder and attempted murder with a firearm specification, and felonious assault. On August 5, 2021, Appellant entered into a Crim.R. 11 plea agreement. Appellant pleaded guilty to attempted murder with a firearm specification, and the other charges were dismissed. The maximum possible sentence for the first degree felony charge was eleven to sixteen-and-one-half years in

prison, plus three years for the firearm specification. The parties jointly recommended a prison term of six to nine years on the attempted murder charge, plus three years for the firearm specification. The court proceeded immediately to sentencing. The court sentenced Appellant to six to nine years in prison and a three-year term for the firearm specification. The court filed its judgment entry the same day. Appellant filed this appeal on October 17, 2022, which was beyond the 30-day period for filing an appeal. Appellant requested leave to file the late appeal, which was granted on November 29, 2022.

ASSIGNMENT OF ERROR

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

{¶3} Appellant argues that the right to a trial by jury is protected by the Sixth Amendment of the United States Constitution, and Article I, Section 5 of the Ohio Constitution. Appellant contends that a sentence that relies on judicial factfinding that is beyond the facts that could be found by a jury violates the right to a jury trial. Appellant cites *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002), and *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004), in support.

{¶4} Appellant argues that the Reagan Tokes Act, contained in part pursuant to R.C. 2967.271, allows the Department of Rehabilitation and Correction (DRC) to enhance a sentence beyond the possible sentence allowed by a jury verdict by adding an indefinite part to the sentence for certain felonies. See R.C. 2929.144. The Reagan Tokes Act

requires a judge to impose a minimum sentence, and then allows the DRC to add prison terms up to fifty percent more than the imposed minimum prison term. The range for the minimum prison terms is found in R.C. 2929.14. Appellant contends that granting the DRC power to add time to a sentence based on facts not presented to a jury is a facial constitutional violation of his right to a jury trial, and that the Reagan Tokes Act should be held to be unconstitutional.

{¶5} The federal cases cited by Appellant held that maximum, consecutive, or enhanced federal sentences that relied on judicial findings that went beyond the facts found by a jury violated the defendants’ right to a trial by jury. In each of these cases the sentence imposed went beyond the sentence that would have been permitted solely by the facts found by the jury. The Ohio Supreme Court relied on these cases to come to the same conclusion regarding Ohio’s sentencing statutes. *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, abrogated by *Oregon v. Ice*, 555 U.S. 160, 172 L.Ed.2d 517, 129 S.Ct. 711 (2009).

{¶6} Appellee argues that the exact issue being argued by Appellant in this appeal was argued in the recent case of *State v. Hacker*, 2023-Ohio-2535, and was rejected. Appellee is correct. *Hacker* reviewed the following issue: “[Appellant] protests that R.C. 2967.271 violates his right to a jury trial because the DRC is authorized to maintain his incarceration beyond the minimum prison term set by the trial court without any jury findings to support the extended incarceration.” *Id.* at ¶ 26. *Hacker* reviewed the same caselaw that Appellant is citing in the instant appeal. *Hacker* summarized the holding of those cases as: “[I]t is unconstitutional for a legislature to remove from the jury

the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed.” *Id.* at ¶ 27.

{¶7} *Hacker* concluded that under the new sentencing provisions of the Reagan Tokes Act:

[T]he “prescribed range of penalties” is determined upon the return of a guilty verdict—or, as in the cases before us, when the offender pleads guilty to the charged offenses. Once an offender is found guilty of an eligible offense, the trial court has the discretion to sentence him to any minimum sentence within the appropriate range. R.C. 2929.14(A)(1)(a) and (2)(a). And the maximum sentence is calculated based on that minimum sentence. *Id.*; R.C. 2929.144(B)(1). Because no determination by the DRC regarding [Appellant’s] behavior while in prison will change the range of penalties prescribed by the legislature and imposed by the trial court, the right to a jury trial is not implicated.

Id. at ¶ 28. *Hacker* concluded that the Reagan Tokes Act did not violate the right to trial by jury and was constitutional.

{¶8} We have recently affirmed cases similar to Appellant’s case on the basis of *Hacker*. *State v. Taylor*, 7th Dist. Mahoning No. 23 MA 0008, 2023-Ohio-4724; *State v. Lukan*, 7th Dist. Columbiana No. 23 CO 0017, 2023-Ohio-4742; and *State v. Coffman*, 7th Dist. Columbiana No. 23 CO 0005, 2023-Ohio-4462.

{¶9} Further, Appellant’s sentence had not even reached the possible maximum sentence for a first degree felony, which is eleven years in prison, even taking into account

the indefinite aspect of the sentence. Appellant was sentenced to six to nine years in prison, and nine years was certainly within the amount that could be authorized by a jury using Appellant's argument. Seeing that Appellant agreed to a possible nine-year prison sentence, and nine years is within the statutory range for that sentence, it is difficult to understand how Appellant can object to the sentence on appeal.

{¶10} Appellant's sole assignment of error is overruled based on the holding and analysis in *Hacker*.

Conclusion

{¶11} Appellant contends that his six-to-nine-year prison sentence for attempted murder violated his right to a jury trial and should be overturned. Appellant argues that the indefinite sentencing process established under the Reagan Tokes Act allows the DRC to enhance a sentence beyond the sentence that would be allowed by a jury verdict alone. Appellant concludes that when a six-year prison term is imposed it cannot be enhanced by three years by the DRC because such an enhancement would not have been based on facts that could be presented to a jury. The very argument made by Appellant in this appeal was made in *State v. Hacker*, 2023-Ohio-2535, and was overruled. Furthermore, the entire six-to-nine year range of Appellant's sentence is within the eleven-year maximum sentence range for first degree felonies. Appellant's sole assignment of error is overruled and the judgment of the trial court is affirmed.

Robb, P.J. concurs

Klatt, J. concurs

For the reasons stated in the Opinion rendered herein, Appellant's assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.