

[Cite as *State v. Stone*, 2020-Ohio-5263.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 109322
 v. :
 :
 BRIAN STONE, :
 :
 Defendant-Appellant. :
 :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: November 12, 2020

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-19-642238-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Michael Barth, Assistant Prosecuting Attorney, *for appellee*.

Mark A. Stanton, Cuyahoga County Public Defender, and John T. Martin, Assistant Public Defender, *for appellant*.

ANITA LASTER MAYS, J.:

{¶ 1} Defendant-appellant Brian Stone (“Stone”) appeals his sentence, and asks this court to hold that S.B. 201 (“Reagan Tokes Act”) is unconstitutional and modify his prison sentence. We affirm.

{¶ 2} Stone pleaded guilty to one count of drug trafficking, a second-degree felony, in violation of R.C. 2925.03(A)(2); and one count of possessing criminal tools, a fifth-degree felony, in violation of R.C. 2923.24(A). Pursuant to the Reagan Tokes Act, the trial court sentenced Stone to a minimum term of two years with an indefinite term of three years for drug trafficking. Stone was also sentenced to six months' imprisonment to be served concurrently to the drug trafficking sentence. Stone acknowledges in his brief that the trial court accurately advised him of his sentence. Stone filed this appeal assigning one error for our review:

- I. 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 the State of Ohio.

I. The Constitutionality of Reagan Tokes Act

A. Standard of Review

{¶ 3} “The interpretation of the constitutionality of a statute presents a question of law.” *In re Special Docket No. 73958*, 8th Dist. Cuyahoga Nos. 87777 and 87816, 2008-Ohio-4444, ¶ 11, citing *Andreyko v. Cincinnati*, 153 Ohio App.3d 108, 2003-Ohio-2759, 791 N.E.2d 1025. “Questions of law are reviewed de novo, independently and without deference to the trial court’s decision.” *Id.*

{¶ 4} Additionally,

“[a] regularly enacted statute of Ohio is presumed to be constitutional and is therefore entitled to the benefit of every presumption in favor of its constitutionality” and “before a court may declare it unconstitutional it must appear beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible.”

Id. at ¶ 12, quoting *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 128 N.E.2d 59 (1955), paragraph one of the syllabus.

{¶ 5} “Moreover, the presumption of validity cannot be overcome unless it appears that there is a clear conflict between the legislation in question and some particular provision or provisions of the Constitution.” *Id.* at ¶ 13, citing *Xenia v. Schmidt*, 101 Ohio St. 437, 130 N.E. 24 (1920), paragraph two of the syllabus; *Dickman*.

B. Law and Analysis

{¶ 6} Stone argues that the Reagan Tokes Act is unconstitutional. “On March 22, 2019, the Ohio legislature enacted the Reagan Tokes Act, which changed the terms of felony sentencing for qualifying felonies of the first or second degree. *See* R.C. 2929.14.” *State v. Young*, 8th Dist. Cuyahoga No. 108868, 2020-Ohio-4135, ¶ 16. Stone pleaded guilty and was sentenced on November 26, 2019. He did not raise the issue of the constitutionality of the Reagan Tokes Act in the trial court. “In general, the failure to raise an issue in the trial court, forfeits the issue on appeal.” *Id.* at ¶ 10, citing *Broadview Hts. v. Misencik*, 8th Dist. Cuyahoga No. 100196, 2014-Ohio-1518, ¶ 19.

{¶ 7} “It is well established that ‘the question of the constitutionality of a statute must generally be raised at the first opportunity and, in a criminal prosecution, this means in the trial court.’” *State v. Alexander*, 12th Dist. Butler No. CA2019-12-204, 2020-Ohio-3838, ¶ 8, citing *State v. Buttery*, Slip Opinion

No. 2020-Ohio-2998, ¶ 7, quoting *State v. Awan*, 22 Ohio St.3d 120, 122, 489 N.E.2d 277 (1986).

{¶ 8} By not first raising the issue with the trial court, Stone’s arguments challenging the constitutionality of the Reagan Tokes Act are forfeited and will not be heard for the first time on appeal. *State v. Ponyard*, 8th Dist. Cuyahoga No. 101266, 2015-Ohio-311, ¶ 7. *See also State v. Quarterman*, 140 Ohio St.3d 464, 2014-Ohio-4034, 19 N.E.3d 900, ¶ 2 (“The failure to challenge the constitutionality of a statute in the trial court forfeits all but plain error on appeal, and the burden of demonstrating plain error is on the party asserting it.”).

{¶ 9} Furthermore,

“We may review the trial court decision for plain error, but we require a showing that but for a plain or obvious error, the outcome of the proceeding would have been otherwise, and reversal must be necessary to correct a manifest miscarriage of justice.” (Citation omitted.) *Id.* at ¶ 16. “The burden of demonstrating plain error is on the party asserting it.” *Id.*

State v. Conant, 4th Dist. Adams No. 20CA1108, 2020-Ohio-4319, ¶ 39.

{¶ 10} In addition to failing to raise a constitutional challenge of the Reagan Tokes Act in the trial court, Stone also has not argued plain error in this appeal. Consequently, we decline to address this issue for the first time on appeal. *See Young*, 8th Dist. Cuyahoga No. 108868, 2020-Ohio-4135, ¶ 21. *See also State v. Dames*, 8th Dist. Cuyahoga No. 109090, 2020-Ohio-4991, ¶ 19 (“Given the lack of presentment to the trial court and the absence of plain error arguments, we decline to address the constitutionality of the Reagan Tokes Act as to this case.”).

{¶ 11} Therefore, Stone's sole assignment of error is overruled.

{¶ 12} 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. The defendant's conviction having been affirmed, any bail pending appeal is terminated.

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

ANITA LASTER MAYS, JUDGE

MARY J. BOYLE, P.J., and
KATHLEEN ANN KEOUGH, J., CONCUR