

[Please see vacated opinion at 2020-Ohio-4135.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, : :

Plaintiff-Appellant, : No. 108868
v. : :

WANDA YOUNG, : :

Defendant-Appellee. : :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: January 28, 2021

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-19-639007-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Callista Plemel, Assistant Prosecuting Attorney, *for appellant.*

Cullen Sweeney, Cuyahoga County Public Defender, and Paul A. Kuzmins, Assistant Public Defender, *for appellee.*

ON RECONSIDERATION¹

¹ The original decision in this appeal, *State v. Young*, 8th Dist. Cuyahoga No. 108868, 2020-Ohio-4135, released on August 20, 2020, is hereby vacated. This opinion,

EILEEN T. GALLAGHER, P.J.:

{¶ 1} Plaintiff-appellant, state of Ohio, with leave of court, appeals a judgment calculating the maximum term of supervision for defendant-appellee, Wanda Young, who was found not guilty by reason of insanity. The state claims the following error:

The trial court erred in determining the court's jurisdiction over defendant-appellee terminated after 11 years because R.C. 2945.401(J) requires the trial court to find defendant-appellee's maximum term of imprisonment would have been 11 to 16.5 years if convicted of aggravated burglary.

{¶ 2} We find no merit to the appeal and affirm the trial court's judgment.

I. Facts and Procedural History

{¶ 3} On April 1, 2019, Cleveland police responded to a call about a break-in at a home on Delrey Avenue. Police observed a smashed window with large amounts of blood on the glass. Upon entering the home, the police followed the sound of noises coming from an upstairs bedroom where they found Young screaming at a 90-year old woman and her adult son. Young was bleeding profusely and the police observed blood all over the house. The police recognized that Young "was clearly in a crisis situation" and secured her. (Tr. 10.)

{¶ 4} Young was subsequently charged with two counts of aggravated burglary in violation of R.C. 2911.11(A)(1), two counts of assault in violation of R.C.

issued upon reconsideration, is the court's journalized decision in this appeal. *See* App.R. 22(C); *see also* S.Ct.Prac.R. 7.01.

2903.13(A), two counts of abduction in violation of R.C. 2905.02(A)(2), one count of disrupting public services in violation of R.C. 2909.04(A)(3), and one count of burglary in violation of R.C. 2911.12(A)(2). Young pleaded not guilty by reason of insanity.

{¶ 5} Following her arrest, Young was evaluated by Dr. Cathleen Cerny-Suelzer, a psychiatrist in the court psychiatric clinic. Dr. Cerny-Suelzer determined that Young was suffering from bipolar I disorder with psychotic features and that she recently experienced a manic episode with mixed features. Dr. Cerny-Suelzer opined that, as a result of Young's serious mental illness, she did not "know the wrongfulness of her actions" when she committed the acts giving rise to this case.

{¶ 6} Based on Dr. Cerny-Suelzer's expert opinions, the court found that Young proved, by the preponderance of the evidence, that she suffered from a severe mental disease that so impaired her reason that she was unable to know the wrongfulness of her actions at the time she committed the acts charged in the indictment. Therefore, the court found Young not guilty by reason of insanity and ordered Young to be evaluated to determine whether Young should be subject to hospitalization pursuant to R.C. 2945.40.

{¶ 7} Dr. Cerny-Suelzer reevaluated Young pursuant to the court's order. At a subsequent hearing, the state and defense counsel stipulated to Dr. Cerny-Suelzer's finding that Young suffered from "a substantial disorder of thought, mood, and perception" that required hospitalization. (Tr. 16.) Based on Dr. Cerny-Suelzer's report and the stipulations of counsel, the court found that Young had a

mental disorder requiring hospitalization, with the goal of conditional release back into the community. At the civil commitment hearing, Young explained that she had been off her medications for ten months. She believed that she and her children were the victims of criminal activity and that she went to a neighbor's house to call for help "but somewhere along the way [her] synapses got crossed, or [she] snapped or something * * *" and she was "not sure how [she] went from wanting to call for help to breaking into [the victim's] home looking for [her] kids." (Tr. 20-21.) Young also stated that since being back on her medications, she was "feeling a lot better." (Tr. 8.)

{¶ 8} With respect to hospitalization, the court stated, in relevant part:

In Ms. Young's case, Count 1 is an aggravated burglary, a felony of the first degree. The possible prison term for that sentence — sorry, for that crime is 3 to 11 years, which makes the maximum amount of time she would be subject to the court's jurisdiction 11 years. It is this Court's interpretation that the tail or indefinite term that comes into play under Reagan Tokes Law would not apply to cases of not guilty by reason of insanity as the Department of Rehabilitation and Correction would be the entity that would keep Ms. Young incarcerated if she were in fact in prison. Ms. Young's case does not implicate the Department of Rehabilitation and Corrections [sic]. So it is this Court's interpretation after research that the maximum amount of time Ms. Young can be placed under the Court's jurisdiction is 11 years.

(Tr. 22.) The state did not object to the court's calculation of its maximum term of supervision of Young under the Reagan Tokes Law. Nevertheless, the state now challenges the court's final calculation of its term of supervision in its sole assignment of error.

II. Law and Analysis

{¶ 9} In its sole assignment of error, the state argues the trial court erred in determining the court's jurisdiction to supervise Young terminated after 11 years. The state contends that under R.C. 2945.401(J), as amended by the Reagan Tokes Act, Am.Sub.S.B. No. 201, 2018 Ohio Laws 157, the trial court should have found it had jurisdiction to supervise Young for an indefinite period of between 11 and 16 and one-half years, as a result of Young's not guilty by reason of insanity plea to two charges of aggravated burglary.

{¶ 10} The state failed to object to the trial court's calculation of its term of supervision. The failure to raise an issue in the trial court generally forfeits the issue on appeal. *Broadview Hts. v. Misencik*, 8th Dist. Cuyahoga No. 100196, 2014-Ohio-1518, ¶ 19.

{¶ 11} Young argues the issue is simply forfeited, and the trial court's judgment should be affirmed. The state, on the other hand, argues that Young's commitment to the hospital involves a criminal sentence that is contrary to law and is, therefore, reviewable as a void sentence. Indeed, void sentences are always reviewable. *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, ¶ 18. Alternatively, the state argues we can review the trial court's judgment for plain error since it is within the appellate court's discretion to consider forfeited issues for plain error. *Hill v. Urbana*, 79 Ohio St.3d 130, 133-134, 679 N.E.2d 1109 (1997), citing *In re M.D.*, 38 Ohio St.3d 149, 527 N.E.2d 286 (1988), syllabus.

{¶ 12} Despite the state's assertion that Young's "sentence" is void, the trial court's jurisdiction to supervise the rehabilitation of a person acquitted of a crime

by reason of insanity is civil in nature, not criminal. *State v. Z.J.*, 8th Dist. Cuyahoga No. 87912, 2007-Ohio-552, ¶ 18. “A finding of not guilty by reason of insanity is not a criminal conviction.” *Id.*, citing *State v. Tuomala*, 104 Ohio St.3d 93, 2004-Ohio-6239, 18 N.E.2d 272. Therefore, civil commitments due to not guilty by reason of insanity verdicts are not the same as criminal sentences.

{¶ 13} Furthermore, the state has failed to present a proper plain error argument. Indeed, the words “plain error” are never mentioned in the state’s merit brief. Although the state mentions plain error in its reply brief, it cites Crim.R. 52(B) without any plain error analysis. And since civil commitments due to not guilty by insanity verdicts are civil in nature, Crim.R. 52(B) is inapplicable.

{¶ 14} Plain error in civil cases is limited to those “extremely rare cases” in which “exceptional circumstances require its application to prevent a manifest miscarriage of justice, and where the error complained of, if left uncorrected, would have a materially adverse effect on the character of, and public confidence in, judicial proceedings.” *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121, 679 N.E.2d 1099 (1997). Indeed, “[t]he plain error doctrine should never be applied to reverse a civil judgment simply because a reviewing court disagrees with the result obtained in the trial court, or to allow litigation of issues which could easily have been raised and determined in the initial trial.” *Id.* Thus, to reverse on plain error, the error must be both apparent on the face of the record and prejudicial to the appellant. *Wells Fargo Bank, N.A. v. Lundein*, 8th Dist. Cuyahoga No. 107184, 2020-Ohio-28, ¶ 12.

{¶ 15} The state argues the trial court erred in concluding that its jurisdiction to supervise Young was limited to a maximum of 11 years. The state contends the court had jurisdiction to supervise Young in the hospital for up to 16 and one-half years under the Reagan Tokes Act.

{¶ 16} R.C. 2945.401 governs the trial court's jurisdiction to supervise the rehabilitation of individuals found not guilty by reason of insanity. As relevant here, R.C. 2945.401(A) provides, in relevant part:

[A] person found not guilty by reason of insanity and committed pursuant to section 2945.40 of the Revised Code shall remain subject to the jurisdiction of the trial court pursuant to that commitment, and to the provisions of this section, until the final termination of the commitment as described in division (J)(1) of this section. * * *

{¶ 17} R.C. 2945.401(J)(1) provides that a person found guilty by reason of insanity "continues to be under the jurisdiction of the trial court until the final termination of the commitment." Pursuant to R.C. 2945.401(J)(1), the commitment of a person found not guilty by reason of insanity terminates upon the earlier of one of the following:

(a) The defendant or person no longer is a mentally ill person subject to court order or a person with an intellectual disability subject to institutionalization by court order, as determined by the trial court;

(b) The expiration of the maximum prison term or term of imprisonment that the defendant or person could have received if the defendant or person had been convicted of the most serious offense with which the defendant or person is charged or in relation to which the defendant or person was found not guilty by reason of insanity;

(c) The trial court enters an order terminating the commitment under the circumstances described in division (J)(2)(a)(ii) of this section. [Governing competency to stand trial].

{¶ 18} The issue in this case concerns subsection (b), which provides that the trial court's continuing jurisdiction to supervise an individual, found not guilty by reason of insanity, extends through the maximum prison term the individual could have received if he or she had been found guilty of the most serious offense with which the individual was charged. In Young's case, the most serious offense charged was aggravated burglary, in violation of R.C. 2911.11(B), which is a first-degree felony.

{¶ 19} Prior to March 22, 2019, first-degree felonies were punishable by a definite prison term of 3 to 11 years, in one-year increments. R.C. 2929.14(A)(1)(b). However, 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. Under the Reagan Tokes Act, qualifying first- and second-degree felonies committed on or after March 22, 2019, are now subject to the imposition of indefinite sentences. Under R.C. 2929.14, the sentencing judge must select the minimum prison term from within the currently established range for the particular felony and a "maximum term" of an additional fifty percent of the imposed term. R.C. 2929.144(B).

{¶ 20} The Reagan Tokes Act establishes a presumptive release date at the end of the minimum term imposed. R.C. 2967.271(B). However, the Ohio Department of Rehabilitation and Correction ("ODRC") may rebut that presumption and keep the offender in prison for an additional period not to exceed

the maximum term imposed by the sentencing judge, depending on the inmate's behavior in prison. R.C. 2967.271(C).

{¶ 21} Young committed the acts giving rise to this case on April 1, 2019, and she was charged with two counts of aggravated burglary, both qualifying felonies of the first degree. R.C. 2929.14 governs basic prison terms for first-degree felonies and states, in relevant part:

For a felony of the first degree committed on or after the effective date of this amendment, the prison term shall be an indefinite prison term with a stated minimum term selected by the court of three, four, five, six, seven, eight, nine, ten, or eleven years and a maximum term that is determined pursuant to section 2929.144 of the Revised Code[.]

R.C. 2929.14(A). Thus, under the Reagan Tokes Act, the maximum prison term Young could have received for her most serious offense was 11 years, plus fifty percent of the term, i.e., an additional five and one-half years, for a maximum indefinite prison term of 16 and one-half years, had she been convicted of the most serious offense for which she was charged. But Young was found not guilty by reason of insanity.

{¶ 22} Although Young was not convicted of a crime, the trial court was nevertheless required to determine the maximum term of imprisonment Young would have been subjected to if she had been found guilty. The court concluded that it could supervise Young's hospitalization for a maximum of 11 years because any term of incarceration beyond 11 years could only be imposed by the ODRC as a result of misbehavior in prison. The court reasoned that it was impossible for ODRC to review her conduct in prison given that she was not in prison. There is nothing in

the court's rationale suggesting a miscarriage of justice or that there was an error that, if left uncorrected, would have a material adverse effect of the character of, and the public confidence in, the judicial proceedings. This is particularly true since the trial court may terminate its supervision whenever Young no longer requires hospitalization, which is likely to be long before reaching the maximum period of supervision, whether that time period is 11 years or 16 and one-half years. Therefore, the state has failed to demonstrate that the claimed error "seriously affects the basic fairness, integrity, or public reputation of the judicial process * * * ." *Goldfuss*, 79 Ohio St.3d 116, at 121, 679 N.E.2d 1099. In other words, the state has failed to establish a claim for plain error.

{¶ 23} The state's sole assignment of error is overruled.

{¶ 24} 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.

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

EILEEN T. GALLAGHER, PRESIDING JUDGE

KATHLEEN ANN KEOUGH, J., and
PATRICIA ANN BLACKMON, J., CONCUR

