

[Cite as *State v. Byrd*, 2022-Ohio-1168.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 110451
 v. :
 :
 MARQUS BYRD, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: April 7, 2022

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case Nos. CR-20-647832-A and CR-20-652759-A

Appearances:

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

Cullen Sweeney, Cuyahoga County Public Defender, and John T. Martin, Assistant Public Defender, *for appellant*.

JAMES A. BROGAN, J.:

{¶ 1} Defendant-appellant Marqus Byrd appeals his sentence and assigns the following error:

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; the trial court plainly erred in imposing a Reagan Tokes indefinite sentence.

{¶ 2} After reviewing the record and applicable law, we affirm the trial court's judgment.

{¶ 3} Byrd pleaded guilty in two separate cases to attempted aggravated burglary (Count 1), endangering children (Count 4), having weapons while under disability (Count 5), criminal damaging (Count 7) in Cuyahoga C.P. No. CR-20-652759-A and unlawful sexual conduct with a minor (Count 1), carrying concealed weapons (Count 2), and criminal child enticement (Count 3) in Cuyahoga C.P. No. CR-20-647382-A. Over objection, the trial court sentenced Byrd to an indefinite prison term of a minimum of three years and a maximum of four and one-half years in prison on the attempted aggravated burglary charge, pursuant to the Reagan Tokes Law. The trial court sentenced Byrd to six months on the endangering children charge, 24 months on the weapons while under disability charge, 60 days in jail on the criminal damaging charge, 48 months in prison on the unlawful sexual conduct with a minor charge, 12 months in prison on the carrying concealed weapon charge, and 6 months in jail on the child enticement charge. The court's journal entry states, in relevant part, that "Counts are to run concurrently to each other for

a total of 3 years to 4.5 years in prison. Sentence to run concurrently with Case No. CR 647832.”

{¶ 4} Byrd now brings this appeal challenging the constitutionality of his indefinite sentence under the Reagan Tokes Law.¹

{¶ 5} In his sole assignment of error, Byrd argues his indefinite sentence under the Reagan Tokes Law is unconstitutional. He contends the Reagan Tokes Law violates his Sixth Amendment right to a jury trial, the separation-of-powers doctrine, and due process of law.

{¶ 6} In accordance with this court’s en banc decision in *State v. Delvallie*, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470, the constitutional challenges presented in this appeal are overruled.

{¶ 7} Therefore, the sole assignment of error is overruled.

{¶ 8} 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. Case remanded to the trial court for execution of sentence.

¹ Neither party has raised any issues as to the imposed sentence; therefore, any determination as to the validity of the sentence is beyond the scope of this direct appeal. *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, ¶ 26; *State v. Henderson*, 161 Ohio St.3d 285, 2020-Ohio-4784, 162 N.E.3d 776, ¶ 27. *See also State v. Davis*, 119 Ohio St.3d 422, 2008-Ohio-4608, 894 N.E.2d 1221; *State v. Murnahan*, 63 Ohio St.3d 60, 66, 584 N.E.2d 1204 (1992); App.R. 26(B).

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

JAMES A. BROGAN, JUDGE*

MARY J. BOYLE, P.J., and
FRANK DANIEL CELEBREZZE, III, J., CONCUR

*(Sitting by assignment: James A. Brogan, J., retired, of the Second District Court
of Appeals.)