

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 110138
 v. :
 :
 DAVID WURTZ, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: March 17, 2022

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-19-643991-A

Appearances:

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

Valore & Gordillo LLP, and Matthew O. Williams, *for appellant*.

MICHELLE J. SHEEHAN, J.:

{¶ 1} On September 18, 2019, appellant David Wurtz was indicted for aggravated robbery, a first-degree felony; three counts of robbery, a second-degree felony; and theft, a first-degree misdemeanor. The indictment stemmed from a

robbery incident in a Sunoco gas station on September 11, 2019. On October 22, 2019, Wurtz pleaded guilty to one count of robbery in exchange for the state's dismissal of the remaining counts of the indictment. The court sentenced him to an indefinite sentence of five to seven and one-half years pursuant to the Reagan Tokes Law as defined under R.C. 2901.011, which went into effect on March 22, 2019.

{¶ 2} On December 8, 2020, Wurtz, pro se, filed a delayed appeal, which this court granted. On appeal, Wurtz only challenges the constitutionality of the Reagan Tokes Law. He claims the law is unconstitutional because it violates a defendant's right to a jury trial, due process, and separation of powers. Pursuant to this court's en banc decision in *State v. Delvallie*, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470, Wurtz's claims are overruled. Accordingly, we affirm the judgment of the trial court.

{¶ 3} Judgment affirmed.

It is ordered that appellee recover of 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.

MICHELLE J. SHEEHAN, JUDGE

KATHLEEN ANN KEOUGH, P.J., and
MARY EILEEN KILBANE, J., CONCUR

N.B. Judge Mary Eileen Kilbane joined the dissenting opinion by Judge Lisa B. Forbes and the concurring in part and dissenting in part opinion by Judge Anita Laster Mays in *Delvallie* and would have found the Reagan Tokes Law unconstitutional.