

[Cite as *State v. McCalpine*, 2022-Ohio-842.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
Plaintiff-Appellant,	:	
v.	:	No. 110665
BEATRICE MCCALPINE,	:	
Defendant-Appellee.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: March 17, 2022

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-20-652764-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Daniel T. Van, Assistant Prosecuting Attorney, *for appellant.*

Cullen Sweeney, Cuyahoga County Public Defender, and Francis Cavallo, Assistant Public Defender, *for appellee.*

MICHELLE J. SHEEHAN, J.:

{¶ 1} Appellant, the state of Ohio, appeals from the felony prison sentence imposed on appellee Beatrice McCalpine.¹ The trial court did not impose an indefinite sentence pursuant to the Reagan Tokes Law as defined in R.C. 2901.111, citing our prior opinion, *State v. Delvallie*, 2021-Ohio-1809, 173 N.E.3d 544 (8th Dist.). That decision was vacated by *State v. Delvallie*, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470 (en banc).

{¶ 2} After being indicted for two counts of murder in violation of R.C. 2903.02, one count of felonious assault in violation of R.C. 2903.11, and one count of tampering with evidence in violation of R.C. 2921.12, McCalpine entered into a plea agreement with the state. On July 13, 2021, McCalpine entered a plea of guilty to one count of voluntary manslaughter in violation of R.C. 2903.03, a felony of the first degree, and to one count of tampering with evidence in violation of R.C. 2921.12(A), a felony of the third degree. The plea agreement included an agreed and recommended aggregate prison sentence of 14 years' imprisonment.

{¶ 3} At the time of the plea, the trial court advised McCalpine of the indefinite sentence attendant to the voluntary manslaughter charge at the time of the plea. The trial court imposed the agreed aggregate sentence of 14 years' imprisonment; however, it did not impose an indefinite sentence, citing this court's

¹ We use the spelling of appellee's last name, "McCalpine," within this opinion as this spelling appears in the indictment, rather than the alternate spelling of appellee's last name, "McCalphine," as it appears on the docket. See App.R. 9(E), 11(A).

decision in *State v. Delvallie*, 2021-Ohio-1809, 173 N.E.3d 544 (8th Dist.), *vacated by State v. Delvallie*, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470 (en banc).

{¶ 4} The state alleges one assignment of error in this appeal, which reads, “The trial court erred when it found S.B. 201 to be unconstitutional and did not impose an indefinite sentence pursuant to S.B. 201.” The Ohio Revised Code provides the state the right to appeal a sentence if it is contrary to law. R.C. 2953.08(B)(2). A sentence that fails to impose a mandatory provision is contrary to law. *E.g., State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶ 21.

{¶ 5} The Reagan Tokes Law provides that certain first- and second-degree felonies are qualifying offenses subject to an indefinite sentencing scheme. R.C. 2929.14. When imposing prison terms for offenders with qualifying offenses, sentencing courts are to impose an indefinite sentence by imposing a stated minimum prison term as provided in R.C. 2929.14(A)(2)(a) and an accompanying maximum prison term as provided in R.C. 2929.144 (B).

{¶ 6} McCalpine was sentenced for voluntary manslaughter, a felony of the first degree subject to an indefinite sentence. This court, sitting en banc, vacated the decision the trial court relied upon in sentencing McCalpine. Accordingly, we find the sentence imposed to be contrary to law, sustain the state’s assignment of error, reverse the sentence imposed, and remand this matter to the trial court for the purpose of resentencing McCalpine.

{¶ 7} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover of appellee 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
EILEEN A. GALLAGHER, J., CONCUR