

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellant, :  
 : No. 112073  
 v. :  
 :  
 HENRY HALL, :  
 :  
 Defendant-Appellee. :

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT: AFFIRMED IN PART, REVERSED IN PART,  
AND REMANDED**  
**RELEASED AND JOURNALIZED: June 29, 2023**

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-22-671778-A

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***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  
Rick L. Ferrara, Assistant Public Defender, *for appellee.*

SEAN C. GALLAGHER, J.:

{¶ 1} Appellant the state of Ohio appeals the prison sentence imposed on  
appellee Henry Hall on four counts because the trial court did not impose an  
indefinite sentence as required under S.B. 201, the Reagan Tokes Law. Upon review,

we reverse the sentence imposed on the base charge in Counts 3, 6, 9, and 11, which are qualifying felonies of the second degree, and remand the case to the trial court for the limited purpose of imposing an indefinite sentence on those counts as required by the Reagan Tokes Law. The convictions in this case, the sentence imposed on Count 12, and the sentences imposed on the firearm specifications in Counts 3, 6, and 9 are not affected by this appeal.

**{¶ 2}** Hall was charged under a 12-count indictment with offenses that occurred on or about June 7, 2022. On September 20, 2022, Hall entered a guilty plea to each of the following counts:

Counts 3, 6, and 9, as amended, felonious assault, a felony of the second degree, in violation of R.C. 2903.11(A)(2), with a one-year firearm specification;

Count 11, as amended, felonious assault, a felony of the second degree, in violation of R.C. 2903.11(A)(2);

Count 12, as charged, having weapons while under disability, a felony of the third degree in violation of R.C. 2923.13(A)(2).

All remaining counts were nolle.

**{¶ 3}** Hall was sentenced on September 21, 2022, and the judgment entry was filed September 22, 2022. For each of the four qualifying felonies of the second degree, charged in Counts 3, 6, 9, and 11, the trial court imposed a definite prison term of five years on the base charge.<sup>1</sup> The trial court also imposed one year on the mandatory firearm specification on each of Counts 3, 6, and 9, to be served prior to

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<sup>1</sup> The state incorrectly states in its brief that a prison term of one year was imposed on the base charge for each of these counts.

and consecutive with the stated prison term on the base charge. On Count 12, which was a felony of the third degree, the trial court imposed a prison term of 36 months. The trial court ordered the one-year firearm specifications on Counts 3, 6, and 9 to run consecutive to each other and ordered all underlying counts to be served concurrently. The total prison time imposed for all counts was eight years. The trial court included postrelease control on each count.

{¶ 4} The state timely filed an appeal. Under the sole assignment of error, the state claims that “the trial court plainly erred when [it] did not impose an indefinite sentence pursuant to S.B. 201.”

{¶ 5} R.C. 2953.08(B)(2) provides the state with the right to appeal a sentence that is contrary to law. A sentence that fails to impose a mandatory sentencing provision is “contrary to law.” *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶ 21.

{¶ 6} The Reagan Tokes Law provides that first- and second-degree felonies are qualifying offenses subject to an indefinite sentencing scheme. R.C. 2929.14. Trial courts imposing prison terms on “qualifying offenses” are required to impose 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).

{¶ 7} The Supreme Court of Ohio has yet to rule on the constitutionality of the Reagan Tokes Law, which is currently pending before the court. *See State v. Simmons*, Case No. 2021-0532, and *State v. Hacker*, Case No. 2020-1496. This court, sitting en banc, has held that the Reagan Tokes Law is constitutional in that

it does not violate the separation-of-powers doctrine and does not violate a defendant's right to a jury trial or due process of law. *State v. Delvallie*, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.), *discretionary appeal allowed*, 166 Ohio St.3d 1496, 2022-Ohio-1485, 186 N.E.3d 830. We are not persuaded by Hall's arguments against the *Delvallie* decision. "The trial court, as an inferior court, was required to follow the controlling authority of this [c]ourt's precedent unless the Ohio Supreme Court renders a decision to the contrary." *State v. McCormick*, 2d Dist. Montgomery No. 29607, 2023-Ohio-1303, ¶ 15.

**{¶ 8}** It is undisputed that Hall committed the offenses involved in this case in June 2022. Therefore, he pleaded guilty to four qualifying felony offenses of the second degree that are subject to the indefinite sentencing scheme set forth in R.C. 2929.14. The trial court was required to follow this court's precedent in *Delvallie* and to impose an indefinite sentence for each of those offenses in accordance with R.C. 2929.14(A)(2)(a) and 2929.144(B). Because the trial court failed to do so, we find the sentence imposed on the base charge in Counts 3, 6, 9, and 11 to be contrary to law. Hall's convictions are not affected by this appeal, and the sentence imposed on Count 12 and on the firearm specifications for Counts 3, 6, and 9 remain as imposed.

**{¶ 9}** Accordingly, we reverse the sentence imposed on the base charge in Counts 3, 6, 9, and 11, and we remand for the limited purpose of imposing an indefinite sentence on those counts as required by the Reagan Tokes Law.

**{¶ 10}** Judgment affirmed in part, reversed in part, and remanded.

It is ordered that appellant and appellee share 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.

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SEAN C. GALLAGHER, JUDGE

MICHELLE J. SHEEHAN, P.J., and  
EMANUELLA D. GROVES, J., CONCUR

N.B. Judge Emanuella D. Groves concurred with the opinions of Judge Lisa B. Forbes (dissenting) and Administrative Judge Anita Laster Mays (concurring in part and dissenting in part) in *Delvallie* and would have found the Reagan Tokes Law unconstitutional.