

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 112166
 v. :
 :
 DONALD GUNDERMAN, :
 :
 Defendant-Appellant. :
 :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: June 29, 2023

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-21-663200-A

Appearances:

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

Cullen Sweeney, Cuyahoga County Public Defender, and Michael V. Wilhelm, Assistant Public Defender, *for appellant*.

MARY EILEEN KILBANE, J.:

{¶ 1} Defendant-appellant Donald Gunderman (“Gunderman”) argues that the Reagan Tokes Law is unconstitutional and, therefore, his sentence imposed

under the law is invalid. For the following reasons, we find that the Reagan Tokes Law is not unconstitutional and affirm the lower court's ruling.

Factual and Procedural History

{¶ 2} On October 12, 2021, in Cuyahoga C.P. No. CR-21-663200-A, a Cuyahoga County Grand Jury indicted Gunderman on twelve counts stemming from Gunderman and codefendant Danielle Pascale's ("Pascale") alleged acts of kidnapping, child endangerment, and tampering with evidence and Gunderman's alleged domestic violence.¹

{¶ 3} On October 21, 2021, Gunderman pleaded not guilty to the indictment. From October 2021, through September 2022, the parties conducted discovery.

{¶ 4} On September 12, 2022, the trial court conducted a plea hearing where Gunderman withdrew his prior pleas and pleaded guilty to the following: Count 1, kidnapping in violation of R.C. 2905.01(A)(3), a felony of the first degree; Count 2, endangering children in violation of R.C. 2919.22(B)(1), a felony of the second degree; Count 3, endangering children in violation of R.C. 2919.22(B)(1), a misdemeanor of the first degree; Counts 4 and 5, endangering children in violation of R.C. 2919.22(B)(2), felonies of the third degree; Counts 7 and 8, endangering children in violation of R.C. 2919.22(B)(3), felonies of the third degree; Count 11, tampering with evidence in violation of R.C. 2921.12(A)(1), a felony of the third

¹ Pascale filed a direct appeal in 8th Dist. Cuyahoga No. 112154 and is not a party to this appeal.

degree; and Count 12, domestic violence in violation of R.C. 2919.25(A), a misdemeanor of the first degree. The court nolleed Counts 6, 9, and 10. The trial court instructed Gunderman that Counts 1 and 2 were qualifying offenses under the Reagan Tokes Law. The trial court advised Gunderman that he would be subject to a mandatory five-year term of postrelease control. The trial court referred Gunderman to the court psychiatric clinic for a recommendation regarding disposition.

{¶ 5} On October 26, 2022, the trial court held a sentencing hearing. The trial court imposed an indefinite sentence of 11 to 16 and one half years on Count 1; eight years on Count 2; six months each on Counts 3 and 12; and 36 months each on Counts 4, 5, 7, 8, and 11. The court further ordered that Counts 2, 3, 4, 5, 7, 8, 11, and 12 run consecutive to the sentence on Count 1 and to each other. In combination with Reagan Tokes, this results in an indefinite sentence of 35 to 40 and one half years.² The court also imposed postrelease control.

{¶ 6} On November 23, 2022, Gunderman filed a timely notice of appeal presenting a single assignment of error for our review: The trial court violated Mr. Gunderman's constitutional rights by imposing a Reagan Tokes sentence under S.B. 201.

² We note that neither party has raised any other issue as to the imposed sentence; therefore, any determination as to the validity of the sentence — other than the application of the Reagan Tokes Law — 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.

Legal Analysis

{¶ 7} In his sole assignment of error, Gunderman argues that the Reagan Tokes Law is unconstitutional and, therefore, his sentence imposed under that law is invalid. Specifically, Gunderman argues that his indefinite sentence under the Reagan Tokes Law, enacted under S.B. 201 and R.C. 2901.011, is unconstitutional because it violates his constitutional right to a jury trial, the separation-of-powers doctrine, and his due-process rights. Gunderman notes in his brief that he advances these arguments to preserve them for further review. The state argues that this court found the Reagan Tokes Law constitutional in *State v. Delvallie*, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.).

{¶ 8} This court's en banc decision in *Delvallie* overruled Gunderman's challenges to S.B. 201 that are presented in this appeal. Therefore, we are constrained to follow *Delvallie* and find that the Reagan Tokes Law is not unconstitutional. We must find that Gunderman's sentence pursuant to the Reagan Tokes Law was not a violation of his constitutional rights and, thus, his assignment of error is overruled.

{¶ 9} 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.

MARY EILEEN KILBANE, JUDGE

EILEEN A. GALLAGHER, P.J., and
EILEEN T. GALLAGHER, 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 Administrative Judge Anita Laster Mays in *Delvallie* and would have found the Reagan Tokes Law unconstitutional.

Judge Eileen T. Gallagher joined the dissent by Judge Lisa B. Forbes in *Delvallie* and would have found that R.C. 2967.271(C) and (D) of the Reagan Tokes Law are unconstitutional.