[Cite as *State v. Grays*, 2023-Ohio-2482.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 111600
v.	:	
KATRON GRAYS,	:	
Defendant-Appellant.	:	

EN BANC DECISION AND JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED IN PART, REVERSED IN PART, AND REMANDED
RELEASED AND JOURNALIZED: July 20, 2023

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-21-663463-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, Carl M. Felice and Tasha L. Forchione, Assistant Prosecuting Attorney, *for appellee*.

The Law Office of Jaye M. Schlachet and Eric M. Levy, *for appellant*.

EILEEN T. GALLAGHER, J.:

{¶ 1} Pursuant to App.R. 26, Loc.App.R. 26, and *McFadden v. Cleveland State Univ.*, 120 Ohio St.3d 54, 2008-Ohio-4914, 896 N.E.2d 672, this court sua sponte determined that *State v. Grays*, 8th Dist. Cuyahoga No. 111600, 2023-Ohio-

221, conflicts with *State v. Bobo*, 2022-Ohio-3555, 198 N.E.3d 580 (8th Dist.), on a dispositive point of controlling authority. En banc review is necessary to maintain harmony in the law of this district. *See, e.g., Midland Funding L.L.C. v. Hottenroth*, 2014-Ohio-5680, 26 N.E.3d 269, ¶ 1 (8th Dist.) (resolving the conflict between two disparate lines of authority interpreting procedural rules through an en banc proceeding).

En Banc Decision

{¶ 2} It is well established that "[a] criminal defendant's choice to enter a plea of guilty or no contest is a serious decision." *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 25. Thus, due process requires that a defendant's plea be knowingly, intelligently, and voluntarily made. *State v. Bishop*, 156 Ohio St.3d 156, 2018-Ohio-5132, 124 N.E.3d 766, ¶ 10 (lead opinion), citing *Clark* at ¶ 25. "'Failure on any of those points renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution.'" *State v. Barker*, 129 Ohio St.3d 472, 2011-Ohio-4130, 953 N.E.2d 826, ¶ 9, quoting *State v. Engle*, 74 Ohio St.3d 525, 527, 660 N.E.2d 450 (1996).

{¶ 3} Crim.R. 11 was adopted in 1973 in order to facilitate a more accurate determination of the voluntariness of a defendant's plea by ensuring an adequate record for review. *State v. Stone*, 43 Ohio St.2d 163, 167-168, 331 N.E. 2d 411 (1975); *State v. Stewart*, 51 Ohio St.2d 86, 92-93, 364 N.E. 2d 1163 (1977). The rule prescribes the procedure for accepting pleas of guilty or no contest and requires the trial court to engage the defendant in a detailed colloquy to ensure the "criminal

defendant is fully informed of his or her rights and understands the consequences of his or her guilty plea." *Barker* at ¶ 10.

{¶ 4} Although the nonconstitutional rights listed in Crim.R. 11 include the defendant's right to be informed of the "maximum penalty involved," there is no dispute that Crim.R. 11 does not require trial courts to inform defendants of their eligibility for certain sentencing reductions unless it is incorporated into the plea agreement. *See State v. Williams*, 8th Dist. Cuyahoga Nos. 104078 and 104849, 2017-Ohio-2650, ¶ 14; *State v. Dowdy*, 8th Dist. Cuyahoga No. 105396, 2017-Ohio-8320, ¶ 12; *State v. Fisher*, 6th Dist. Lucas No. L-15-1262, 2016-Ohio-4750, ¶ 17. With that stated, however, a guilty plea may be invalidated where the defendant is given misinformation regarding his or her eligibility for a sentencing reduction. *Id.* at ¶ 15. As explained by this court,

> if a defendant is induced to enter a guilty plea by erroneous representations as to the applicable law, the plea has not been entered knowingly and intelligently, but the defendant must demonstrate prejudice resulting from the erroneous representation, i.e., that but for erroneous information, the plea would not have been made.

State v. Ealom, 8th Dist. Cuyahoga No. 91455, 2009-Ohio-1365, ¶ 19. Thus, whether the trial court made an erroneous statement of law during its Crim.R. 11 colloquy is relevant to the determination of whether a criminal defendant's plea was knowingly, intelligently, and voluntarily made. *Williams*, 8th Dist. Cuyahoga Nos. 104078 and 104849, 2017-Ohio-2650, ¶ 15, *State v. Silvers*, 181 Ohio App.3d 26, 2009-Ohio-687, 907 N.E.2d 805 (2d Dist.); *State v. Byrd*, 178 Ohio App.3d 646, 2008-Ohio-5515, 899 N.E.2d 1033 (2d Dist.).

{¶ 5} Since the adoption of the Reagan Tokes Law, effective March 22, 2019, common pleas courts have routinely addressed the implications of the new sentencing scheme prior to accepting a criminal defendant's plea. Upon explaining the nature of the indefinite-sentencing calculation and its relevance to the defendant's understanding of the "maximum penalty involved," courts have consistently gone on to describe the offender's ability to reduce his or her minimum prison term by exhibiting "exceptional conduct while incarcerated" or demonstrating an "adjustment to incarceration." Relevant to this en banc decision, such an advisement was provided to the criminal defendants in *Bobo* and *Grays*.

{¶ 6} The criminal defendants in *Bobo* and *Grays* were each convicted of second-degree felonies that were subject to the Reagan Tokes Law and carried mandatory prison terms pursuant to R.C. 2929.13(F)(4) and (5), respectively. During each Crim.R. 11 colloquy, the defendants were sufficiently advised of the effects of their guilty pleas, the rights they would be waiving by entering a guilty plea, and the maximum penalties associated with their individual felony offenses. In each instance, the court clarified that Bobo and Grays were required to serve a mandatory term of imprisonment based on the nature of their offenses. Bobo and Grays were also provided a detailed explanation of the indefinite-sentencing scheme implemented by the Reagan Tokes Law, including the rebuttable presumption that they would be released upon the expiration of the minimum term. Finally, Bobo and Grays were advised that they were entitled to earn a reduction on the minimum term

in increments of 5 to 15 percent if they demonstrated exceptional conduct or an adjustment to incarceration.

{¶ 7} Following sentencing in each case, Bobo and Grays filed direct appeals, arguing, among other things, that their pleas were not knowingly, intelligently, or voluntarily made because the trial court inaccurately advised them that they were entitled to a reduction of their mandatory prison terms for exceptional conduct or an adjustment to incarceration. Each defendant maintained that but for the trial court's erroneous advisement, they would not have entered their guilty pleas.

{¶ 8} Following a careful examination of the record in each case, this court affirmed Bobo's and Grays' convictions, generally finding that their pleas were knowingly, intelligently, and voluntarily made. Significantly, however, the panels reached opposing legal conclusions regarding the novel issue of whether the trial court erroneously advised the defendants that they were eligible for certain sentencing reductions on their mandatory terms of imprisonment. In *Bobo*, for instance, this court found the trial court erred "when it advised Bobo that he could earn credit for good behavior to reduce his mandatory prison term * * *." *Bobo* at ¶ 24. Nevertheless, the *Bobo* panel concluded that Bobo was not prejudiced by the trial court's incorrect statement of law under the specific circumstances presented in that case.

{¶ 9} In contrast, the *Grays* panel concluded that the identical advisement did not constitute a misstatement of law. The panel clarified that a defendant who is subject to an indefinite sentence is eligible for the sentencing reductions

contemplated under the Reagan Tokes statute, R.C. 2967.271(F)(1), so long as the offender has committed a nonlife, first- or second-degree felony that is not a sexually-oriented offense. The panel determined that this is true even though the defendant is subject to a mandatory prison term, and therefore, is not eligible for judicial release, earned credit, "or any other provision of R.C. Chapter 2967." *Grays* at ¶ 27, 32.

{¶ 10} As previously discussed, the advisement debated in *Bobo* and *Grays* has been commonly given to criminal defendants during Crim.R. 11 colloquies involving first- or second-degree felony offenses since the enactment of the Reagan Tokes Law. The legality of such an advisement, if given, is undoubtedly a repeatable legal issue that has significant liberty implications on those defendants who are pleading or have already pleaded guilty to first- or second-degree felony offenses that carry mandatory prison terms since March 22, 2019. It is therefore paramount to resolve any ambiguity created by the opposing legal conclusions reached in *Bobo* and *Grays*. Accordingly, we must resolve the following straightforward question of law in this en banc decision:

> Does a trial court err during a Crim.R. 11 colloquy by advising a defendant, who is subject to an indefinite prison term under the Reagan Tokes Law, that he or she may earn a reduction on his or her minimum prison term for exceptional conduct or an adjustment to incarceration when the defendant is required to serve a mandatory prison term pursuant to R.C. 2929.13(F)?

{¶ 11} To answer this dispositive issue of law, we must carefully examine the relevant statutory provisions governing the Reagan Tokes Law and mandatory prison terms.

> De novo review applies to questions of statutory interpretation. *Ceccarelli v. Levin*, 127 Ohio St.3d 231, 2010-Ohio-5681, 938 N.E.2d 342, ¶ 8. A court's main objective is to determine and give effect to the legislative intent. *State ex rel. Solomon v. Police & Firemen's Disability & Pension Fund Bd. of Trustees*, 72 Ohio St.3d 62, 65, 647 N.E.2d 486 (1995). "The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact." *Slingluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902), paragraph two of the syllabus. "When the statutory language is plain and unambiguous, and conveys a clear and definite meaning, we must rely on what the General Assembly has said," *Jones v. Action Coupling & Equip., Inc.*, 98 Ohio St.3d 330, 2003-Ohio-1099, 784 N.E.2d 1172, ¶ 12, and apply the statute as written, *Summerville v. Forest Park*, 128 Ohio St.3d 221, 2010-Ohio-6280, 943 N.E.2d 522, ¶ 18, citing *Hubbell v. Xenia*, 115 Ohio St.3d 77, 2007-Ohio-4839, 873 N.E.2d 878, ¶ 11.

State v. Jones, Slip Opinion No. 2022-Ohio-4485, ¶ 24.

I. Applicable Principles of Felony Sentencing

A. The Reagan Tokes Law

{¶ 12} The Reagan Tokes Law, effective as of March 22, 2019, implemented a system of indefinite sentencing for nonlife felonies of the first- and second-degree committed on or after the effective date. R.C. 2901.011. As previously recognized by this court, "[t]he Reagan Tokes Law represents the Ohio legislature's first major departure from the so-called 'truth in sentencing law,' enacted through S.B. 2 in 1996. It embodies a policy determination by the Ohio legislature that definite terms under S.B. 2 failed for serious felony offenders." *State v. Delvallie*, 2022-Ohio-470, 185 N.E.3d 536, ¶ 1 (8th Dist.).

{¶ 13} Pursuant to the Reagan Tokes Law, a sentencing court imposing a prison term under R.C. 2929.14(A)(1)(a) or (A)(2)(a) is required to order a minimum prison term under that provision and a maximum prison term as determined by R.C. 2929.144(B). The Reagan Tokes Law establishes a "presumption that the person shall be released from service of the sentence on the expiration of the offender's minimum prison term[1] or on the offender's presumptive earned early release date,[2] whichever is earlier." R.C. 2967.271(B). However, the Ohio Department of Rehabilitation and Correction ("ODRC") may rebut that presumption and keep the offender in prison for an additional period not to exceed the maximum term imposed by the sentencing judge, depending on the inmate's behavior in prison. R.C. 2967.271(C).

{¶ 14} As relevant here, the Reagan Tokes Law also includes reformative-based incentives for offenders, including a provision for "earned reduction of minimum prison term" ("ERMPT"). The provision, governed by R.C. 2967.271(F), provides an offender who is serving a nonlife felony indefinite prison term the opportunity to reduce his or her minimum prison term for "exceptional conduct

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[1] "'Offender's minimum prison term' means the minimum prison term imposed on an offender under a non-life felony indefinite prison term, diminished as provided in section 2967.191 or 2967.193 of the Revised Code or in any other provision of the Revised Code, other than division (F) of this section, that provides for diminution or reduction of an offender's sentence." R.C. 2967.271(A)(1).

[2] "'Offender's presumptive earned early release date' means the date that is determined under the procedures described in division (F) of this section by the reduction, if any, of an offender's minimum prison term by the sentencing court and the crediting of that reduction toward the satisfaction of the minimum term." R.C. 2967.271(A)(2).

while incarcerated or the offender's adjustment to incarceration." R.C. 2967.271(F)(1). The length of the earned reduction is limited to a range of 5 to 15 percent based on the level of the offense for which the prison term was imposed. R.C. 2967.271(F)(7)(b). Pursuant to R.C. 2967.271(F)(8), however, the statute's ERMPT provisions

> do not apply with respect to an offender serving a non-life felony indefinite prison term for a sexually oriented offense, and no offender serving such a prison term for a sexually oriented offense is eligible to be recommended for or granted, or may be recommended for or granted, a reduction under those divisions in the offender's minimum prison term imposed under that non-life felony indefinite prison term.

Id.

{¶ 15} Interpreting the language used in R.C. 2967.271(F)(8), Ohio courts have stated that "eligibility for [ERMPT] is [therefore] limited to offenders serving non-life, indefinite prison terms, who are not serving prison terms for sexually oriented offenses." *State v. Dirocco*, 7th Dist. Mahoning Nos. 21 MA 0116 and 21 MA 0117, 2022-Ohio-3221, ¶ 7; *see also State v. Broughton*, 12th Dist. Clinton No. CA2020-09-011, 2021-Ohio-2987, ¶ 12. Accordingly, the exception to eligibility for ERMPT is expressly set forth by the Reagan Tokes Law and is narrowly tailored to exclude a select few offenses from the incentive-laden approach to criminal justice.

B. Mandatory Prison Terms

{¶ 16} Whether an offender is required to serve a mandatory term of imprisonment is also expressly set forth under the Ohio Revised Code. In pertinent part, a "mandatory prison term" is defined as "the term in prison that must be imposed for the offenses or circumstances set forth in divisions (F)(1) to (8) or

(F)(12) to (21) of section 2929.13[.]" R.C. 2929.01(X)(1). In turn, R.C. 2929.13(F) sets forth the circumstances in which the trial court shall impose a mandatory prison term on an offender. The recently amended statute provides, in relevant part:

> Notwithstanding divisions (A) to (E) of this section, the court shall impose a prison term or terms under sections 2929.02 to 2929.06, section 2929.14, section 2929.142, or section 2971.03 of the Revised Code and except as specifically provided in section 2929.20, or section 2967.191 of the Revised Code or when parole is authorized for the offense under section 2967.13 of the Revised Code *shall not reduce the term or terms pursuant to section 2929.20, division (A)(2) or (3) of section 2967.193 or 2967.194,[3] or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code* for any of the following offenses:
>
> * * *
>
> (4) A felony violation of section * * * 2903.08 * * * of the Revised Code if the section requires the imposition of a prison term;
>
> (5) A first, second, or third degree felony drug offense for which section * * * 2925.03 * * * of the Revised Code, whichever is applicable regarding the violation, requires the imposition of a mandatory prison term[.]

(Emphasis added.) R.C. 2929.13(F)(4)-(5).

{¶ 17} The plain language of R.C. 2929.13(F) requires the sentencing court to impose a prison term for certain serious offenses and limits that court's discretion to reduce that term pursuant to R.C. 2929.20 (judicial release); R.C. 2967.193 (earned credit); R.C. 2967.194 (credit for participation in educational, vocational, employment, treatment, etc. programs), or any other provision of R.C. Chapter

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[3] Effective April 4, 2023, the 2022 amendment by S.B. 288 modified the introductory language of section (F) by deleting "divisions (C) to (I) of section 2967.19" following "section 2929.20" and substituting "division (A)(2) or (3) of section 2967.193 or 2967.194" for "section 2967.19, section 2967.193."

2967, except in certain enumerated circumstances. *See State v. Johnson*, 116 Ohio St.3d 541, 2008-Ohio-69, 880 N.E.2d 896, ¶ 16. As applicable to offenders who commit a felony offense that is designated under R.C. 2929.13(F) and is subject to the mandates of the Reagan Tokes Law, the statute provides that such offenders are not eligible for judicial release, earned credit, or credit for their participation in designated programs due to the mandatory nature of his or her minimum prison term. As relevant to this en banc review, R.C. 2929.13(F)'s reference to "any other provision of Chapter 2967" also suggests that such offenders are not eligible for the ERMPT provision contained in R.C. 2967.271(F)(1).

C. Resolution of the Applicable Statutory Provisions

{¶ 18} After careful consideration, we find the broad, exclusory language of R.C. 2929.13(F) conflicts or is otherwise inconsistent with the carefully constructed exception contained in R.C. 2967.271(F)(8). At this time, R.C. 2929.13(F) expressly prohibits certain offenders who are serving nonlife, indefinite prison terms from reducing their minimum prison term under the Reagan Tokes Law, while R.C. 2967.271(F), a significant component of the Reagan Tokes Law, expressly grants the same offenders access to ERMPT so long as the subject offense is not a sexually oriented offense.

{¶ 19} The eligibility requirements for ERMPT are unambiguous and expressly reflect the legislature's intent to limit access to the reductions to a limited and very specific group of offenders. Significantly, the language used in R.C. 2967.271(F) does not reference the term "mandatory prison term" or otherwise

address the implications of R.C. 2929.13(F). This is in stark contrast to the other statutory provisions listed under R.C. 2929.13(F), each of which either directly refer to R.C. 2929.13(F) or expressly exclude offenders who are serving mandatory prison terms from eligibility for the reductions contemplated therein. *See* R.C. 2929.20(A)(1)(a) ("Except as provided in division (A)(1)(b) of this section, "eligible offender" means any person who, on or after April 7, 2009, is serving a stated prison term that includes one or more nonmandatory prison terms."); R.C. 2967.193(C)(1) ("No person confined in a state correctional institution * * * shall be awarded any days of credit under division (A) of this section [if] the person is serving a prison term that section 2929.13 * * * of the Revised Code specifies cannot be reduced pursuant to this section or this chapter."); R.C. 2967.194(C)(1) ("No person confined in a state correctional institution * * *shall be awarded any days of credit under division (A)(2) or (3) of this section [if] the person is serving a prison term that section 2929.13 * * * of the Revised Code specifies cannot be reduced pursuant to this section or this chapter."). The decision to exclude such language from R.C. 2967.271(F) is telling.

{¶ 20} "'It is a well-settled principle of statutory construction that when an irreconcilable conflict exists between two statutes that address the same subject matter, one general and the other special, the special provision prevails as an exception to the general statute.'" *State v. Pribble*, 158 Ohio St.3d 490, 2019-Ohio-4808, 145 N.E.3d 259, ¶ 13, quoting *State v. Conyers*, 87 Ohio St.3d 246, 248, 719 N.E.2d 535 (1999). R.C. 1.51, the statutory version of this general/specific canon,

recognizes that optimally, conflicting statutes should be construed "so that effect is given to both" but provides that

> [i]f the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

Id. As explained by the Ohio Supreme Court:

> The rationale behind the general/specific canon is that "'the particular provision is established upon a nearer and more exact view of the subject than the general, of which it may be regarded as a correction.' Or think of it this way: the specific provision comes closer to addressing the very problem posed by the case at hand and is thus more deserving of credence."

Pribble at ¶ 13, quoting Scalia & Garner, *Reading Law: The Interpretation of Legal Texts*, 183 (2012), quoting Jeremy Bentham, *General View of a Complete Code of Laws*, reprinted in 3 *The Works of Jeremy Bentham*, 210 (John Bowring Ed.1843).

{¶ 21} Applying the foregoing principles to the competing statutes, we are unable to construe R.C. 2929.13(F) and 2967.271(F)(1)-(8) in a way that gives effect to both statutes. To do so would require this court to infer language that is not expressly included in the statutory provisions that encompass the Reagan Tokes Law. Perhaps more significantly, any attempt to reconcile the conflicting statutes would greatly expand the number of offenders who would be rendered ineligible for ERMPT, while simultaneously being exposed to the more punitive aspects of the Reagan Tokes Law, including R.C. 2967.271(C) and (D).

{¶ 22} Moreover, regardless of whether this court were to construe R.C. 2967.271 as the more specific or general provision, we find the Reagan Tokes Law

prevails in this matter. Here, the Reagan Tokes Law, including the construction of R.C. 2967.271, was enacted later than R.C. 2929.13. Although there have been recent amendments to various portions of R.C. 2929.13, which was originally enacted in July 1996, the substance of the statutory provision has remained substantially similar since its enactment. *See* R.C. 1.54 ("A statute which is * * * amended is intended to be a continuation of the prior statute and not a new enactment, so far as it is the same as the prior statute."). Accordingly, we construe R.C. 2967.271, which has implemented significant changes to the sentencing structure for nonlife, first- and second-degree felony offenses, as being enacted later in time.

{¶ 23} Similarly, even if this court were to deem R.C. 2967.271 the more general statute, we find the statute more accurately comports with the General Assembly's manifest intent to "return to an incentive-based, rehabilitative prison process for serious offenders." *Delvallie*, 2022-Ohio-470, 185 N.E.3d 536, ¶ 6 (8th Dist.). As articulated by this court, the Reagan Tokes Law recognizes the fundamental issues associated with the state of Ohio's rising prison population and the need for mechanisms to promote and assess an inmate's reformative conduct. *Id.* at ¶ 11. To address these issues, the law

> incentivize[s] socially acceptable conduct by offering inmates a tangible way to reduce their overall sentences through buying into the social contract — a tacit agreement to live together in accordance to the socially established rules of behavior. * * * The Reagan Tokes Law offers inmates the opportunity to demonstrate their willingness to reform and, in the process, to receive lesser sentences based on their behavior, instead of serving definite terms. These changes provide the inmate the opportunity to reduce the overall prison term below what would be served under the pre-S.B. 201 definite sentencing structure. *Id.* Under

> the pre-S.B. 201 definite sentencing law, Ohio focused on the punitive nature of the imprisonment system. The Reagan Tokes Law offers an albeit small, but beginning, step away from that draconian approach.

(Citations omitted.) *Id.* at ¶ 6. Thus, the Reagan Tokes Law, including the provisions governing an offender's ability to reduce his or her minimum prison term by 5 to 15 percent, reflects the General Assembly's goal "to return Ohio to its core sentencing approach [by] implementing the reformative incentive for offenders that was lost to the definite sentencing structure." *Id.* at ¶ 12. Given the breadth of felony offenses listed under R.C. 2929.13(F), we find it would be contrary to the intent of the General Assembly to prohibit a sentencing court from reducing a prison term pursuant to "any other provision of Chapter 2967" for the first- or second-degree felony offenses listed in R.C. 2929.13(F)(1)-(22) that would otherwise qualify for ERMPT under the Reagan Tokes Law.

{¶ 24} In reaching this conclusion, we recognize that Ohio Adm.Code 5120-2-19, titled "Recommended Reduction of Non-Life Felony Indefinite Prison Term," sets forth an administrative rule that is applicable "to the discretion afforded to the director, under section 2967.271 of the Revised Code, to recommend that a sentencing court reduce the minimum prison term of an incarcerated adult serving a non-life felony indefinite prison term." The rule, among other things, defines relevant terms contained in R.C. 2967.271 and sets forth the procedural process associated with the director's ERMPT recommendation to the sentencing court. Relevant to this en banc review, the rule further discusses the implications of a mandatory prison term and R.C. 2929.13(F), stating as follows:

> An incarcerated adult serving a mandatory prison term, as defined under section 2929.01 of the Revised Code, will not be considered for a recommended reduction until all mandatory prison terms have expired.

Ohio Adm.Code 5120-2-19(H).

{¶ 25} The relevance and practical function of Ohio Adm.Code 5120-2-19 is not lost on this court. However,

> it is the role of the judiciary, not administrative agencies, to make the ultimate determination about what the law means. Thus, the judicial branch is never required to defer to an agency's interpretation of the law. As we explain, an agency interpretation is simply one consideration a court may sometimes take into account in rendering the court's own independent judgment as to what the law is.

TWISM Ents., L.L.C. v. State Bd. of Registration for Professional Engineers & Surveyors, Slip Opinion No. 2022-Ohio-4677, ¶ 3.

{¶ 26} Ohio Adm.Code 5120-2-19 indicates that it "amplifies" the statutory authority set forth under R.C. 2967.271. Yet, section (H) of the administrative rule is not premised on any statutory language contained in the applicable portion of the Reagan Tokes Law. As previously discussed, our interpretation of R.C. 2967.271(F) is based on the unambiguous language of the exclusionary provision and the overarching goals of the Reagan Tokes Law. S.B. 201 contains no ERMPT exception for offenders serving a mandatory prison term, and there is certainly no language in R.C. 2967.271 to suggest that an otherwise eligible offender cannot be considered for a sentencing reduction until the mandatory portion of his or her sentence is served. Had the legislature intended to exclude or otherwise delay an offender serving a mandatory prison term from earning the reductions contemplated under R.C.

2967.271(F)(1), language consistent with Ohio Adm.Code 5120-2-19(H) would have been included in R.C. 2967.271(F)(8).

{¶ 27} Based on the foregoing, we find the Reagan Tokes Law only prevents offenders serving a nonlife indefinite prison term for a sexually oriented offense from earning the sentencing reductions contemplated under R.C. 2967.271(F). All other offenders serving an indefinite prison term for a nonlife felony of the first- or second-degree are eligible for ERMPT. Accordingly, we answer the en banc question in the negative and hereby overrule *Bobo* to the extent it holds otherwise. A trial court does not commit reversible error during a Crim.R. 11 colloquy by advising a criminal defendant, who is subject to an indefinite prison term under the Reagan Tokes Law, that he or she may earn a reduction on his or her minimum prison term for exceptional conduct or an adjustment to incarceration when the defendant is required to serve a mandatory prison term pursuant to R.C. 2929.13(F).

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EILEEN T. GALLAGHER, JUDGE

ANITA LASTER MAYS, A.J.; FRANK DANIEL CELEBREZZE, III, LISA B. FORBES, EILEEN A. GALLAGHER, SEAN C. GALLAGHER, KATHLEEN ANN KEOUGH, MARY EILEEN KILBANE, and MICHAEL JOHN RYAN, JJ., CONCUR

MARY J. BOYLE, J., DISSENTS (WITH SEPARATE OPINION)

EMANUELLA D. GROVES and MICHELLE J. SHEEHAN, JJ., CONCUR WITH JUDGE MARY J. BOYLE'S DISSENTING OPINION

MARY J. BOYLE, J., DISSENTING:

{¶ 28} I respectfully dissent. In this en banc decision, we are to resolve the following question of law:

> Does a trial court err during a Crim.R. 11 colloquy by advising a defendant, who is subject to an indefinite prison term under the Reagan Tokes Law, that he or she may earn a reduction on his or her minimum prison term for exceptional conduct or an adjustment to incarceration when the defendant is required to serve a mandatory prison term pursuant to R.C. 2929.13(F)?

The en banc majority resolves this issue by answering the question in the negative. I respectfully disagree and would answer the question in the positive.

{¶ 29} The en banc majority chooses to construe R.C. 2929.13 and 2967.271 and apply statutory construction in a way to resolve the "conflict," relying on the General Assembly's intent behind the Reagan Tokes Law. However, I would find that no conflict exists between R.C. 2929.13 and 2967.271. Rather, I would give the statutes their plain meaning and find, as this court did in *Bobo*, that R.C. 2929.13(F)(5) provides for a mandatory prison term for a second-degree felony under R.C. 2925.03(C)(4)(e), which shall not be reduced pursuant to R.C. 2967.193, in addition to other statutes. *Bobo*, 2022-Ohio-3555, 198 N.E.3d 580, ¶ 23-24 (8th Dist.).

{¶ 30} The trial court's misinformation that Bobo is entitled to good-time credit resulted in partial compliance with Crim.R. 11(C)(2)(a), and as the majority acknowledges, Bobo had to establish that he was prejudiced by the trial court's error before he was entitled to have his plea vacated for the nonconstitutional right of the

"maximum penalty involved." In *Bobo*, the record failed to support that he was prejudiced by the trial court's error. *Id.* at ¶ 25-27. As a result, the *Bobo* Court found that his plea was knowingly, intelligently, and voluntarily made. *Id.*

{¶ 31} For these reasons, I respectfully dissent and would not find a conflict between *Grays* and *Bobo*.

Merit Panel Decision

EILEEN T. GALLAGHER, J.:

{¶ 32} Defendant-appellant, Katron Grays ("Grays"), appeals from his convictions and sentence. He raises the following assignments of error for review:

> 1. The trial court erred when it found Grays's plea was voluntary, knowing, and intelligent and that he was aware of the maximum penalty involved where at the time of his change of plea he was given inaccurate information about prison reduction where the trial court imposed a mandatory prison sentence.
>
> 2. Grays's indefinite sentence imposed under the Reagan Tokes sentencing scheme violates Grays's rights under the United States Constitution applied to the state of Ohio through the Fourteenth Amendment and the Ohio constitutions as it denies Grays due process of law; violates the Sixth Amendment right to a jury trial; violates the separation of powers doctrine; does not provide fair warning of the dictates of the statute to ordinary citizens; and the statute conferred too much authority to the Ohio Department of Rehabilitation and Correction.
>
> 3. Grays's sentence is contrary to law where the trial court failed to comply with the required notices contained in R.C. 2929.19(B)(2)(c) when imposing sentence.

{¶ 33} After careful review of the record and relevant case law, we affirm in part, reverse in part, and remand for the trial court to make the necessary advisements under R.C. 2929.19(B)(2)(c).[4]

I. Factual and Procedural History

{¶ 34} On October 15, 2021, Grays was named in a four-count indictment, charging him with aggravated-vehicular assault in violation of R.C. 2903.08(A)(1)(a), with a furthermore clause that Grays was driving with a suspended license (Count 1); aggravated-vehicular assault in violation of R.C. 2903.08(A)(2)(b), with a furthermore clause that Grays was driving with a suspended license (Count 2); operating while under the influence in violation of R.C. 4511.19(A)(1)(a) (Count 3); and operating while under the influence in violation of R.C. 4511.19(A)(1)(a), with a furthermore clause that Grays was previously convicted of or pleaded guilty to one violation of R.C. 4511.19(A) or (B) or an equivalent offense (Count 4).

{¶ 35} On March 15, 2022, Grays withdrew his previously entered pleas of not guilty and expressed his desire to accept the terms of a negotiated plea agreement with the state. At the conclusion of a Crim.R. 11 plea colloquy, Grays pleaded guilty to aggravated-vehicular assault as charged in Count 1 of the indictment, a felony of the second degree, and operating while under the influence as charged in Count 3 of the indictment, a misdemeanor of the first degree. In

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[4] The original announcement of decision, *State v. Grays*, 8th Dist. Cuyahoga No. 111600, 2023-Ohio-221, released January 26, 2023, is hereby vacated. This opinion is the court's journalized decision in this appeal.

exchange for his guilty pleas, the remaining counts were nolled. Satisfied that the guilty pleas were knowingly, voluntarily, and intelligently made, the trial court accepted Grays's pleas and referred him to the county probation department for a presentence-investigation report.

{¶ 36} At sentencing, the trial court imposed an indefinite prison term of 8 to 12 years on Count 1 in accordance with the Reagan Tokes Law (enacted through S.B. 201). Grays was also sentenced to six months in jail on Count 3, to run concurrently with the sentence imposed on Count 1.

{¶ 37} Grays now appeals from his convictions and sentence.

II. Law and Analysis

A. Crim.R. 11

{¶ 38} In the first assignment of error, Grays argues his guilty pleas were not knowingly, voluntarily, and intelligently made because the trial court inaccurately advised him that he was entitled to good-time credit on a mandatory, minimum prison term. Grays contends that "by misstating the law and advising [him] that his mandatory prison sentence could be reduced, [he] was prejudiced and improperly induced into entering a guilty plea due to the inaccurate statement of law made by the trial court." Grays suggests that but for the erroneous advisement, he would not have pleaded guilty.

{¶ 39} "Ohio's Crim.R. 11 outlines the procedures that trial courts are to follow when accepting pleas." *State v. Dangler*, 162 Ohio St.3d 1, 2020-Ohio-2765, 164 N.E.3d 286, ¶ 11. Crim.R. 11(C)(2) provides that when accepting a guilty or no-

contest plea in a felony case, the trial court must personally address the defendant and

> (a) Determin[e] that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.
>
> (b) Inform[ ] the defendant of and determin[e] that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.
>
> (c) Inform[ ] the defendant and determin[e] that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

{¶ 40} "When a criminal defendant seeks to have his conviction reversed on appeal, the traditional rule is that he must establish that an error occurred in the trial court proceedings and that he was prejudiced by that error." *Dangler* at ¶ 13. "The test for prejudice is 'whether the plea would have otherwise been made.'" *Id.* at ¶ 16, quoting *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990). A defendant must establish prejudice "'on the face of the record'" and not solely by virtue of challenging a plea on appeal. *Id.* at ¶ 24, quoting *Hayward v. Summa Health Sys.*, 139 Ohio St.3d 238, 2014-Ohio-1913, 11 N.E.3d 243, ¶ 26.

{¶ 41} The traditional rule is subject to two limited exceptions. *Id.* at ¶ 14-16. Under these two exceptions, no showing of prejudice is required (1) when a trial court fails to explain the constitutional rights set forth in Crim.R. 11(C)(2)(c) that a

defendant waives by pleading guilty or no contest, and (2) when a trial court has completely failed to comply with a portion of Crim.R. 11(C). *Id.* at ¶ 14-15, citing *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 31; *State v. Sarkozy*, 117 Ohio St.3d 86, 2008-Ohio-509, 881 N.E.2d 1224, ¶ 22. "Aside from these two exceptions, the traditional rule continues to apply: a defendant is not entitled to have his plea vacated unless he demonstrates he was prejudiced by a failure of the trial court to comply with the provisions of Crim.R. 11(C)." *Id.* at ¶ 16, citing *Nero* at 108.

{¶ 42} When reviewing a trial court's compliance with Crim.R. 11, the inquiry no longer focuses on strict, substantial, or partial compliance with the rule. *State v. Kauffman*, 2021-Ohio-1584, 170 N.E.3d 952, ¶ 12 (8th Dist.). Rather, *Dangler* instructs reviewing courts to engage in the following inquiry*:*

> (1) has the trial court complied with the relevant provision of the rule? (2) if the court has not complied fully with the rule, is the purported failure of a type that excuses a defendant from the burden of demonstrating prejudice? and (3) if a showing of prejudice is required, has the defendant met that burden?

Dangler, 162 Ohio St.3d 1, 2020-Ohio-2765, 164 N.E.3d 286 at ¶ 17.

{¶ 43} In this case, there is no dispute that the trial court properly explained the constitutional rights Grays would be waiving by pleading guilty. Crim.R. 11(C)(2)(c). The record further reflects that Grays understood the effect of his plea, the nature of his offenses, and that the court, upon acceptance of the plea, could proceed with judgment and sentence.

{¶ 44} Regarding the maximum penalties involved, Grays pleaded guilty to aggravated-vehicular assault in violation of R.C. 2903.08(A)(1)(a) (Count 1) and operating while under the influence in violation of R.C. 4511.19(A)(1)(a) (Count 3). Relevant to this merit decision, the sentencing range applicable to the aggravated-vehicular-assault offense is governed by R.C. 2903.08(D). The statute provides, in relevant part:

> (1) The court shall impose a mandatory prison term, as described in division (D)(4) of this section, on an offender who is convicted of or pleads guilty to a violation of division (A)(1) of this section.
>
> * * *
>
> (4) A mandatory prison term required under division (D)(1) or (2) of this section shall be a definite term from the range of prison terms provided in division (A)(2)(b) of section 2929.14 of the Revised Code for a felony of the second degree * * * except that if the violation is a felony of the second degree committed on or after the effective date of this amendment, *the court shall impose as the minimum prison term for the offense a mandatory prison term that is one of the minimum terms prescribed for a felony of the second degree in division (A)(2)(a) of section 2929.14 of the Revised Code.*

(Emphasis added.) R.C. 2903.08(D)(1) and (4). In this case, Grays was alleged to have committed the aggravated-vehicular-assault offense on or about September 19, 2021 — well after the amendment to R.C. 2903.08(D)(1), effective March 22, 2019. Accordingly, Grays was subject to an indefinite prison term that carried a mandatory term of imprisonment on the minimum portion of the sentence.

{¶ 45} In turn, R.C. 2929.14(A)(2)(a) sets forth the applicable sentencing range, stating:

> For a felony of the second degree committed on or after the effective date of this amendment, the prison term shall be an indefinite prison

> term with a stated minimum term selected by the court of two, three, four, five, six, seven, or eight years and a maximum term that is determined pursuant to section 2929.144 of the Revised Code, except that if the section that criminalizes the conduct constituting the felony specifies a different minimum term or penalty for the offense, the specific language of that section shall control in determining the minimum term or otherwise sentencing the offender but the minimum term or sentence imposed under that specific language shall be considered for purposes of the Revised Code as if it had been imposed under this division.

Id.

{¶ 46} A review of the record establishes that the trial court advised Grays of the maximum penalties associated with the second-degree felony offense of aggravated-vehicular assault and the first-degree misdemeanor offense of operating while under the influence. Specifically, the trial court advised Grays that he was subject to a mandatory prison term on his second-degree felony offense and could be sentenced to a maximum prison term of 8 to 12 years. The trial court then explained the implications of the indefinite sentencing scheme enacted by the Reagan Tokes Law, including the rebuttable presumption that Grays will be released at the end of the minimum term imposed. Finally, the court notified Grays that he may reduce his minimum prison term under certain circumstances, stating:

> Further, you may earn a reduction on the minimum term in increments of five to 15 percent if you demonstrate exceptional conduct or adjustment to incarceration.

(Tr. 8.)

{¶ 47} On appeal, Grays suggests that the trial court's advisement concerning his eligibility for a sentencing reduction constituted a misstatement of law that

materially influenced his decision to enter a guilty plea. We find no merit to Gray's position.

{¶ 48} Consistent with the decision of this court sitting en banc, we find the Reagan Tokes Law provides Grays the ability to earn a reduction on his mandatory-minimum prison term if he demonstrates exceptional conduct while incarcerated or an adjustment to incarceration. R.C. 2967.271(F)(1). Significantly, the exception set forth under R.C. 2967.271(F)(8) does not apply to Grays's second-degree felony offense. Accordingly, we find the trial court correctly advised Grays at the time of his plea hearing that he was eligible for ERMPT. We therefore find no merit to Grays's position that his plea was not knowingly, intelligently, or voluntarily made due to a perceived error in the court's discussion of the nonconstitutional rights Grays would be waiving by entering pleas of guilty.

{¶ 49} The first assignment of error is overruled.

B. The Reagan Tokes Law

{¶ 50} In the second assignment of error, Grays argues the trial court erred by imposing an indefinite sentence pursuant to the Reagan Tokes Law. He contends the Reagan Tokes Law is unconstitutional because it violates his right to a trial by jury, the separation-of-powers doctrine, and his right to due process[5] under the Ohio

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[5] In this case, Grays's due process argument asserts that R.C. 2967.271 "lacks legislative provisions for a meaningful hearing to prevent depravation of [his liberty] interest without due process of law." We note, however, that Grays further contends that the ODRC's internal policies "are not law" and "do not provide notice and fair warning to the ordinary citizen of what behavior might violate the statute/law." Thus, appellant concludes that R.C. 2967.271 is "void-for-vagueness which is not corrected by the internal policies of ODRC." Grays's void-for-vagueness argument is not unique and has been

and United States Constitutions. Grays alternatively suggests that trial counsel rendered ineffective assistance of counsel by failing to object to the constitutionality of the indefinite sentence.

{¶ 51} Consistent with the well-establish precedent of this court, we find no merit to the constitutional challenges raised within this assigned error. The question of whether the Reagan Tokes Law is constitutional was decided in this court's en banc opinion in *Delvallie*, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.). There, this court found "that the Reagan Tokes Law, as defined under R.C. 2901.011, is not unconstitutional," and reaffirmed the principles established in *State v. Gamble*, 2021-Ohio-1810, 173 N.E.3d 132 (8th Dist.); *State v. Simmons*, 2021-Ohio-939, 169 N.E.3d 728 (8th Dist.); and *State v. Wilburn*, 2021-Ohio-578, 168 N.E.3d 873 (8th Dist.). *See Delvallie* at ¶ 17. Because Grays does not advance any novel argument left unaddressed by the *Delvallie* decision, we find the constitutional challenges presented in this appeal are without merit.

{¶ 52} Moreover, we are unable to conclude that trial counsel rendered ineffective assistance of counsel by failing to challenge the constitutionality of Grays's prison term at the time of sentencing.

{¶ 53} A criminal defendant has the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 685-686, 104 S.Ct. 2052, 80 L.Ed.2d 674

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previously rejected by this court. *See, e.g., State v. Gettings*, 8th Dist. Cuyahoga No. 111176, 2022-Ohio-2691, ¶ 6; *State v. Peterson,* 8th Dist. Cuyahoga No. 109306, 2022-Ohio-835, ¶ 8-9. This is because the void-for-vagueness argument amounts to a due process challenge to the procedural safeguards afforded under R.C. 2967.271, which was expressly considered and overruled in *Delvallie*. *See Delvallie* at ¶ 82-88.

(1984). The Sixth Amendment to the United States Constitution guarantees a defendant the effective assistance of counsel at all "critical stages" of a criminal proceeding, including sentencing. *State v. Davis*, 159 Ohio St.3d 31, 2020-Ohio-309, 146 N.E.3d 560, ¶ 7 ("sentencing is a critical stage in which a felony offender has a right to counsel"), citing *State v. Schleiger*, 141 Ohio St.3d 67, 2014-Ohio-3970, 21 N.E.3d 1033, ¶ 15, and *Gardner v. Florida*, 430 U.S. 349, 358, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977).

{¶ 54} As a general matter, to establish ineffective assistance of counsel, a defendant must demonstrate (1) deficient performance by counsel, i.e., that counsel's performance fell below an objective standard of reasonable representation; and (2) that counsel's errors prejudiced the defendant, i.e., a reasonable probability that but for counsel's errors, the outcome of the proceeding would have been different. *Strickland* at 687-688, 694; *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraphs two and three of the syllabus. "Reasonable probability" is "probability sufficient to undermine confidence in the outcome." *Id.* at 694.

{¶ 55} As stated, this court has routinely rejected the constitutional challenges to the Reagan Tokes Law that are presented in this appeal. *Delvallie*, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.). Therefore, even if trial counsel had challenged the constitutional validity of Grays's indefinite prison term, the objection would have proven to be unsuccessful. Under these circumstances, Grays cannot establish the requisite level of prejudice to warrant a finding of ineffective assistance

of counsel. *See State v. Waters*, 8th Dist. Cuyahoga No. 110821, 2022-Ohio-2667, ¶ 45; *see also State v. Debose*, 8th Dist. Cuyahoga No. 109531, 2022-Ohio-837, ¶ 26 ("The failure to perform a futile act does not constitute ineffective assistance of counsel."), citing *State v. Scarton*, 8th Dist. Cuyahoga No. 108474, 2020-Ohio-2952, ¶ 95; *State v. Kilbane*, 8th Dist. Cuyahoga No. 99485, 2014-Ohio-1228, ¶ 37 ("[T]he failure to do a futile act cannot be the basis for claims of ineffective assistance of counsel, nor could such a failure be prejudicial.").

{¶ 56} The second assignment of error is overruled.

C. Reagan Tokes Notifications

{¶ 57} In the third assignment of error, Grays argues his sentence is contrary to law because the trial court failed to comply with the notice requirements of R.C. 2929.19(B)(2)(c) at the time of sentencing.

{¶ 58} When reviewing felony sentences, appellate courts must apply the standard of review set forth in R.C. 2953.08(G)(2). *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 7. Under that statute, an appellate court may increase, reduce, or modify a sentence, or it may vacate the sentence and remand for resentencing, only if it clearly and convincingly finds either (1) the record does not support the sentencing court's findings under certain statutes, or (2) the sentence is otherwise contrary to law. *Id.* at ¶ 9, citing R.C. 2953.08(G)(2).

{¶ 59} Pursuant to R.C. 2929.19(B)(2)(c), trial courts are required to provide certain notifications if a nonlife felony indefinite prison term is imposed. The statute provides, in pertinent part:

> [I]f the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:
>
> * * *
>
> (c) If the prison term is a non-life felony indefinite prison term, notify the offender of all of the following:
>
> (i) That it is rebuttably presumed that the offender will be released from service of the sentence on the expiration of the minimum prison term imposed as part of the sentence or on the offender's presumptive earned early release date, as defined in section 2967.271 of the Revised Code, whichever is earlier;
>
> (ii) That the department of rehabilitation and correction may rebut the presumption described in division (B)(2)(c)(i) of this section if, at a hearing held under section 2967.271 of the Revised Code, the department makes specified determinations regarding the offender's conduct while confined, the offender's rehabilitation, the offender's threat to society, the offender's restrictive housing, if any, while confined, and the offender's security classification;
>
> (iii) That if, as described in division (B)(2)(c)(ii) of this section, the department at the hearing makes the specified determinations and rebuts the presumption, the department may maintain the offender's incarceration after the expiration of that minimum term or after that presumptive earned early release date for the length of time the department determines to be reasonable, subject to the limitation specified in section 2967.271 of the Revised Code;
>
> (iv) That the department may make the specified determinations and maintain the offender's incarceration under the provisions described in divisions (B)(2)(c)(i) and (ii) of this section more than one time, subject to the limitation specified in section 2967.271 of the Revised Code;
>
> (v) That if the offender has not been released prior to the expiration of the offender's maximum prison term imposed as part of the sentence, the offender must be released upon the expiration of that term.

{¶ 60} "No specific language is required, but the court must impart this information to a defendant at the time of sentencing." *State v. Gates*, 8th Dist.

Cuyahoga No. 110615, 2022-Ohio-1666, ¶ 21. "When trial courts have failed to provide the notifications required by R.C. 2929.19(B)(2)(c), this court has remanded cases for the limited purpose of providing the required notifications." *State v. Bradley*, 8th Dist. Cuyahoga No. 110882, 2022-Ohio-2954, ¶ 13, citing *Gates* at ¶ 25; and *State v. Guzman*, 8th Dist. Cuyahoga No. 111153, 2022-Ohio-2414, ¶ 10; *see also Bobo*, 8th Dist. Cuyahoga No. 111362, 2022-Ohio-3555, at ¶ 33.

{¶ 61} In this case, the trial court made the following statement at the time of sentencing:

> Reagan Tokes does apply to this case. So the minimum sentence in this matter is eight [years], and the maximum sentence is 12 years. There is a presumption that you are released after eight years; however, the ODRC has the legal right under Senate Bill 201 to rebut that presumption and to extend your period of confinement for 50 percent of the term I have imposed.
>
> If ODRC makes that decision, you will be released after the additional time is served. The decision to extend your term in this county is the sole authority of the ODRC, and they alone made the determination based on such criteria as your conduct while incarcerated, your rehabilitation, the threat they believe you pose to the community, whether any restrictive housing sanctions were imposed on you during your incarceration, as well as your security classification.

(Tr. 30-31.)

{¶ 62} After careful review of the sentencing colloquy in its entirety, we find the trial court partially complied with the requirements of R.C. 2929.19(B)(2)(c). Here, the trial court unambiguously advised Grays that there is a presumption that he will be released from prison once he serves his minimum prison term, but that the presumption is rebuttable if the ODRC determines that the factors listed under R.C. 2929.19(B)(2)(c)(ii) are applicable. With that said, however, the record further

demonstrates that the court failed to advise Grays that a hearing would be held before the ODRC could maintain his incarceration beyond the minimum stated term and that he could be evaluated by the ODRC more than once during his confinement. In addition, the trial court did not specifically advise Grays that if he has not been released prior to the expiration of the maximum prison term imposed as part of his sentence, he must be released upon the expiration of that term.

{¶ 63} Based on the foregoing, we find the trial court failed to fully comply with the requirements of R.C. 2929.19(B)(2)(c). In accordance with foregoing precedent of this court, this case is remanded to the trial court for the sole purpose of providing Grays with each of the notifications required by R.C. 2929.19(B)(2)(c). The third assignment of error is sustained.

{¶ 64} Judgment affirmed in part, reversed in part, and remanded to the trial court for further proceedings consistent with this opinion.

It is ordered that appellee and appellant share the 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.

EILEEN T. GALLAGHER, JUDGE

KATHLEEN ANN KEOUGH, P.J., and
LISA B. FORBES, J., CONCUR

N.B. 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.

Judge Lisa B. Forbes is constrained to apply *Delvallie*. For a full explanation, *see State v. Delvallie*, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.) (Forbes, J., dissenting).