

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 112174
 v. :
 :
 HERMAN T. AUSTIN, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: August 3, 2023

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-22-669224-A

Appearances:

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

Cullen Sweeney, Cuyahoga County Public Defender, and Robert McCaleb, Assistant Public Defender, *for appellant*.

EILEEN A. GALLAGHER, J.:

{¶ 1} Defendant-appellant Herman Austin pled guilty to 11 counts: two counts of aggravated burglary (one of which included a one-year firearm specification), one count of aggravated robbery, one count of burglary, four counts

of robbery, two counts of felonious assault and one count of aggravated menacing. The aggravated burglary and aggravated robbery counts were first-degree felonies. The burglary, robbery and felonious assault counts were second-degree felonies. The aggravated menacing count was a first-degree misdemeanor. The charges related to offenses that occurred on or about October 4, 2021.

{¶ 2} Several of the counts merged for sentencing. Under the Reagan Tokes Law, the trial court sentenced Austin to an aggregate, indefinite sentence of 10 to 14.5 half years in prison.¹ Defense counsel objected to the trial court's imposition of an indefinite sentence, arguing that the indefinite sentencing provisions of the Reagan Tokes Law were unconstitutional.

{¶ 3} Austin appealed. He raises the following assignment of error for review:

The trial court violated Mr. Austin's constitutional rights by imposing a sentence pursuant to S.B. 201.

Law and Analysis

{¶ 4} Austin contends that the trial court erred in sentencing him to an indefinite sentence under the Reagan Tokes Law. Under the Reagan Tokes Law, qualifying first- and second-degree felonies committed on or after March 22, 2019 are subject to the imposition of indefinite sentences. Austin contends that the

¹ Specifically, the trial court sentenced Austin as follows: on amended Count 1 (aggravated burglary) to 1 year on the firearm specification to be served prior to and consecutive to a sentence of 9 years to 13.5 years on the underlying offense; on amended Count 5 (aggravated robbery), 9 years; on amended Count 15 (robbery), 8 years; on amended Count 16 (felonious assault), 8 years and on Count 21 (aggravated menacing), 180 days. The trial court ordered that these sentences be served concurrently.

Reagan Tokes Law violates his constitutional right to a trial by jury, the separation-of-powers doctrine and due process.

{¶ 5} The arguments presented in this case do not present novel issues or any new theory challenging the constitutional validity of any aspect of the Reagan Tokes Law left unaddressed by the Ohio Supreme Court's decision in *State v. Hacker*, Slip Opinion No. 2023-Ohio-2535. Accordingly, pursuant to *Hacker*, we overrule Austin's assignment of error.

{¶ 6} Judgment affirmed.

It is ordered that appellee recover from appellant 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 Cuyahoga County Court of Common Pleas to carry this judgment into execution. The defendant's convictions having been affirmed, any bail pending appeal is terminated.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN A. GALLAGHER, JUDGE

FRANK DANIEL CELEBREZZE, III, P.J., and
EMANUELLA D. GROVES, J., CONCUR