

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 : No. 112204  
 v. :  
 :  
 KENNETH GRIFFIN, :  
 :  
 Defendant-Appellant. :

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT:** AFFIRMED IN PART, REVERSED IN PART,  
AND REMANDED  
**RELEASED AND JOURNALIZED:** August 10, 2023

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-22-673637-A

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting  
Attorney, and Natalie Laszcz and Alan Dowling, Assistant  
Prosecuting Attorneys, *for appellee*.

Scott J. Friedman, *for appellant*.

MICHELLE J. SHEEHAN, J.:

{¶ 1} Defendant-appellant Kenneth Griffin (“Griffin”) appeals the denial of his motion to withdraw his guilty pleas and the sentence imposed. We find that the trial court did not abuse its discretion in denying Griffin’s motion to withdraw his

pleas, that the trial court's imposition of an indefinite sentence under the Reagan Tokes Law was proper, but that the trial court did not provide statutory advisements regarding the indefinite sentence. Accordingly, we affirm Griffin's convictions but remand this case for the sole purpose of providing Griffin advisements regarding his indefinite sentence as required by R.C. 2929.19(B)(2)(c).

## **I. Procedural History and Relevant Facts**

{¶ 2} On August 24, 2022, Griffin was indicted for multiple charges regarding two separate burglaries. In July 2022, Griffin was alleged to have broken into a home, stole coins valued at approximately \$50,000, stole checks, and later forged one of the checks. In August 2022, Griffin was alleged to have broken into a home, assaulted a person therein, and stolen multiple items. He was also alleged to have intimidated a victim of the burglary.

{¶ 3} On October 25, 2022, Griffin entered into a plea bargain with the state. Under the terms of the plea bargain, Griffin entered guilty pleas to theft in violation of R.C. 2913.02(A)(1), a felony of the fourth degree; forgery in violation of R.C. 2913.31(A)(1), a felony of the fourth degree; burglary in violation of R.C. 2911.12(A)(1), a felony of the second degree; theft in violation of R.C. 2913.02(A)(1), a felony of the fifth degree; assault in violation of R.C. 2903.13(A), a misdemeanor of the first degree; and intimidation in violation of R.C. 2921.04(A), a misdemeanor of the first degree.

**{¶ 4}** Prior to accepting Griffin’s guilty pleas, the trial court personally addressed him and advised him of his constitutional rights pursuant to Crim.R. 11. The trial court also advised Griffin of the potential sentences it could impose for each charge to which he was pleading guilty, potential fines, and that, in addition to any sentence imposed on the burglary charge, the sentence included the possibility of an additional 50 percent of the time imposed if Griffin violated prison rules and regulations. Having informed Griffin of his constitutional rights and the maximum penalties he faced, the trial court asked Griffin, “Have any threats or promises been made to you to induce this plea?” Griffin responded “No.” The trial court additionally asked Griffin, “Are you satisfied with your lawyer?” Griffin stated, “Yes.”

**{¶ 5}** After he pleaded guilty but prior to sentencing, Griffin filed a pro se motion to withdraw his plea. Within his motion, Griffin stated he expected to be sentenced to prison and argued his attorney had provided “false hopes and expectations” regarding his sentence before his plea. After receiving Griffin’s motion, the trial court appointed new counsel for Griffin.

**{¶ 6}** On November 16, 2022, the trial court held a hearing on Griffin’s motion to withdraw plea. At the hearing, Griffin’s new counsel argued that Griffin believed he would receive a sentence that included probation with any jail time to be served locally. Griffin’s prior counsel addressed the trial court, stating:

Judge, I don’t know how it’s possible for Mr. Griffin to now feel the way that he does. We had a very cordial, professional relationship

throughout the entire time I've represented him. I have never at one time was local incarceration discussed. Ever.

In fact, I made it very clear and it was clearly understood to my sense that Mr. Griffin understood that felony 1s and 2s carried with it the [rebuttable] presumption of prison and that I would work hard to try to persuade the Court to grant him community control sanctions. So, you know, that's all I can —

I think I will share at this point, Judge, I never coerced, threatened in any way for Mr. Griffin to accept this plea. It was certainly my sense he did so voluntarily and knowingly at the time of the plea.

{¶ 7} Griffin was afforded the opportunity to speak and acknowledged to the trial court his attorney told him that “usually it's up to the judge whether I would have to have any prison time or not, but just from the research, having my family look into it more, it's very rare that a person doesn't get any prison time with a [felony of the second degree.]” The trial court noted Griffin's prior counsel had practiced before it for many years and that it had “never known him to ever misrepresent to a client of the Court any terms of any potential plea.”

{¶ 8} The trial court denied Griffin's motion to withdraw plea and proceeded to sentencing. The trial court heard from the state and two victims. Griffin's counsel argued that the trial court should impose a community-control sanction, noting that Griffin didn't have an extensive criminal history, was a college graduate, and was working as a teacher and a football coach. Griffin addressed the court and provided statements in mitigation, noting that drugs played a factor in his actions.

{¶ 9} The trial court imposed concurrent sentences on all charges. As to the burglary charge, a felony of the second degree, the trial court imposed a four-year sentence. The trial court informed Griffin his sentence would have a presumptive release after four years were served and that if he were to violate the rules and regulations of the parole authority, he could get up to an additional sentence of two years for a maximum sentence of six years and he would be entitled to a hearing on any additional time to be served. In total, Griffin was sentenced to an aggregate four- to six- year prison term.

## II. Law and Analysis

{¶ 10} Griffin raises the following assignments of error:

- I. The Appellant's sentence was contrary to law and should be reversed because the trial court failed to provide all advisements required by R.C. 2929.19(B)(2)(c).
- II. As amended by the Reagan Tokes Act, the Revised Code's sentences for first- and second-degree qualifying felonies violate the Constitutions of the United States and State of Ohio.
- III. The trial court abused its discretion when it denied the Appellant's motion to withdraw his guilty plea.

{¶ 11} We address Griffin's assignments of error in reverse order.

### A. **The trial court did not abuse its discretion by denying Griffin's motion to withdraw his guilty pleas**

{¶ 12} Within the third assignment of error, Griffin argues that the trial court erred when it denied his presentence motion to withdraw his guilty plea where he filed a presentence motion to withdraw and that he believed he had been misled regarding the sentence that would be imposed. The state argues that the trial court

did not abuse its discretion by denying the motion to withdraw plea because Griffin was represented by competent counsel; that he made a knowing and voluntary plea; and that he was afforded a hearing on his motion to withdraw his plea. Further, the state argues that a trial court does not abuse its discretion when it denies a motion to withdraw plea where the defendant has a mere change of heart.

**{¶ 13}** Prior to sentencing, a defendant may move the court to withdraw a guilty plea. Crim.R. 32.1. In general, presentence motions to withdraw guilty pleas are to be freely and liberally granted. *State v. Read-Bates*, 8th Dist. Cuyahoga Nos. 108848, 108849, 108850, and 108851, 2020-Ohio-3456, ¶ 14, citing *State v. Xie*, 62 Ohio St.3d 521, 527, 584 N.E.2d 715 (1992). When such motion is made prior to sentencing, the trial court must hold a hearing on the motion, and we review a trial court’s decision on a motion to withdraw plea for an abuse of discretion. *Id.* at ¶ 15, citing *Xie* at paragraph two of the syllabus (“The decision whether to grant or deny a motion to withdraw a guilty plea is entirely within the sound discretion of the trial court and we will not alter the trial court’s decision absent a showing of an abuse of that discretion.”).

**{¶ 14}** An abuse of discretion occurs when a court exercises its judgment in an unwarranted way regarding a matter over which it has discretionary authority. *Johnson v. Abdullah*, 166 Ohio St.3d 427, 2021-Ohio-3304, 187 N.E.3d 463, ¶ 35. In other words, “[a] court abuses its discretion when a legal rule entrusts a decision to a judge’s discretion and the judge’s exercise of that discretion is outside of the

legally permissible range of choices.” *State v. Hackett*, 164 Ohio St.3d 74, 2020-Ohio-6699, 172 N.E.3d 375.

**{¶ 15}** In reviewing a trial court’s decision to grant or deny a motion to withdraw a guilty plea, we look to several factors, including whether

- (1) the accused is represented by competent counsel;
- (2) the accused was afforded a full hearing, pursuant to Crim.R. 11, before he entered the plea;
- (3) after the motion to withdraw is filed, the accused is given a complete and impartial hearing on the motion; and
- (4) the court gives full and fair consideration to the plea withdrawal request.

*State v. Read-Bates* at ¶ 16, citing *State v. Peterseim*, 68 Ohio App.2d 211, 214, 428 N.E.2d 863 (8th Dist.1980). Further, this court has repeatedly held that “a change of heart regarding a guilty plea and the possible sentence is insufficient justification for withdrawal of a guilty plea.” *State v. Peak*, 8th Dist. Cuyahoga No. 107479, 2019-Ohio-2569, ¶ 14, citing *State v. Norman*, 8th Dist. Cuyahoga No. 105218, 2018-Ohio-2929, ¶ 20; *State v. McKissick*, 8th Dist. Cuyahoga No. 105607, 2018-Ohio-282, ¶ 22; *State v. Westley*, 8th Dist. Cuyahoga No. 97650, 2012-Ohio-3571, ¶ 7; *State v. Drake*, 73 Ohio App.3d 640, 645, 598 N.E.2d 115 (8th Dist.1991).

**{¶ 16}** Griffin does not complain that the trial court did not comply with Crim.R. 11 when it accepted his guilty pleas. At the plea hearing, the trial court explained the sentencing range and possible fines for each charge and informed Griffin he would be subject to an indefinite sentence on the burglary charge. Further, Griffin acknowledged his understanding of the indefinite sentence and that no promises had been made to induce the plea.

**{¶ 17}** At the hearing on his motion to withdraw his guilty plea, the trial court afforded Griffin an opportunity to be heard, both through new counsel and his own statements. Griffin argued he was misled as to the potential sentence by his prior counsel, telling the trial court that he understood he would get “local time” and “probation.” However, Griffin acknowledged he was told by prior counsel that “usually it’s up to the Judge whether I would have to do any prison time or not.” Further, Griffin’s prior counsel stated that he did not discuss local incarceration with Griffin and specifically informed him there was a rebuttable “presumption of prison and that [he] would work hard to try to persuade the Court to grant him community control sanctions.”

**{¶ 18}** Griffin was represented by counsel when he entered his plea. Further, the trial court informed Griffin of the maximum prison sentence he could serve when he entered his plea. After receiving the pro se motion to withdraw containing allegations that Griffin was misled as to the potential sentence he faced, the trial court appointed new counsel and held a hearing on the motion to withdraw plea. At the hearing, both new counsel and Griffin were presented an opportunity to be heard and the trial court gave full and fair consideration to the motion.

**{¶ 19}** Our review of the motion to withdraw plea filed and the arguments made reveal Griffin asserted concern about the probability of receiving a prison sentence. Griffin does not complain that the trial court provided insufficient or inaccurate information concerning the potential sentences he faced following his guilty pleas. In *State v. Fortner*, 8th Dist. Cuyahoga No. 85979, 2005-Ohio-5983,



¶ 12, this court found that where the trial court explained the potential sentence at the time of the plea, but the defendant later claimed his attorney provided contradictory information to induce his plea, the circumstances indicated the defendant had a mere change of heart. *Id.* at ¶ 12. In this case, the trial court explained to Griffin the potential sentence and ascertained that he did not enter his plea as a result of any promises made to him. Accordingly, upon the record in this case, we do not find the trial court abused its discretion by denying Griffin's motion to withdraw plea.

{¶ 20} The third assignment of error is overruled.

**B. Griffin's arguments that the Reagan Tokes Law is unconstitutional have been overruled by this court**

{¶ 21} In his second assignment of error, Griffin challenges the constitutionality of the Reagan Tokes Law, arguing that it violates his right to a trial by jury, the doctrine of separation of powers, and his right to due process. In *State v. Hacker*, Slip Opinion No. 2023-Ohio-2535, the Ohio Supreme Court upheld the constitutionality of the Reagan Tokes Law, overruling these arguments.

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

**C. The trial court did not properly impose the indefinite sentence pursuant to the Reagan Tokes Law**

{¶ 23} Within his first assignment of error, Griffin argues that he was not provided advisements under R.C. 2929.19(B)(2)(c) concerning the indefinite sentence imposed. The state agrees. Our review of the record also indicates the trial court did not comply with R.C. 2929.19(B)(2)(c) by failing to notify Griffin of all R.C.

2929.19(B)(2)(c) advisements. Where these advisements are not properly made, this court has remanded the case for the limited purpose of providing the defendant with the proper advisements. *State v. Sullivan*, 8th Dist. Cuyahoga Nos. 111621 and 111917, 2023-Ohio-1036, ¶ 28.

{¶ 24} The first assignment of error is sustained.

### III. Conclusion

{¶ 25} Griffin entered pleas to several felony offenses and was sentenced to an aggregate prison term of four to six years. The trial court did not abuse its discretion in denying Griffin's motion to withdraw plea. When Griffin entered his guilty pleas, he was represented by counsel, the trial court complied with Crim.R. 11, and the trial court explained the potential sentences that could be imposed. After the motion to withdraw plea was filed, the trial court afforded Griffin new counsel and an opportunity to be heard. The trial court gave full and fair consideration to the plea-withdrawal request and did not abuse its discretion in denying the motion to withdraw plea.

{¶ 26} In *State v. Hacker*, Slip Opinion No. 2023-Ohio-2535, the Ohio Supreme Court upheld the constitutionality of the Reagan Tokes Law. However, in imposing a sentence pursuant to the Reagan Tokes Law, the trial court did not fully advise Griffin pursuant to R.C. 2929.19(B)(2)(c).

{¶ 27} Accordingly, the judgment is affirmed in part, reversed in part, and remanded for resentencing solely to provide all the advisements required by R.C. 2929.19(B)(2)(c).

{¶ 28} This cause is affirmed in part, reversed in part and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant and appellee 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.

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MICHELLE J. SHEEHAN, JUDGE

ANITA LASTER MAYS, A.J., and  
FRANK DANIEL CELEBREZZE, III, J., CONCUR