[Cite as *State v. Pascale*, 2023-Ohio-2877.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 112154
v.	:	
DANIELLE PASCALE,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: August 17, 2023

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

Appearances:

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

Eric M. Levy, *for appellant*.

ANITA LASTER MAYS, A.J.:

{¶ 1} Defendant-appellant Danielle Pascale ("Pascale") appeals her sentence and asks this court to vacate the sentence and remand to the trial court for resentencing. We affirm the appellant's sentence.

{¶ 2} Pascale was charged in a 20-count indictment for offenses relating to the abuse of her minor child, A.D. After a plea agreement, Pascale pleaded guilty to three counts of kidnapping, first-degree felonies, in violation of R.C. 2905.01(A)(3); seven counts of endangering children, second-degree felonies, in violation of R.C. 2919.22(B)(1)-(3); one count of endangering children, a first-degree misdemeanor, in violation of R.C. 2919.22(B)(1); and one count of tampering with evidence, a third-degree felony, in violation of R.C. 2921.12(A)(1). The state and Pascale agreed that none of the offenses merged as allied offenses for the purposes of sentencing. Pascale was sentenced to 33 to 38.5 years' imprisonment on the kidnapping charges, 26 years' imprisonment on the endangering children charges, and three years on the tampering with evidence charge, for a total of 62 to 67 and one-half years' imprisonment. Pascale was given jail-time credit for 412 days served.

I. Facts and Procedural History

{¶ 3} A.D., the minor child of Pascale, lived with Pascale and her boyfriend, Donald Gunderman ("Gunderman"). According to the record, Pascale and her boyfriend abused A.D. from 2017 to 2021, when A.D. was removed from their custody. A.D. reported to the police that he was not permitted to eat food in his home, was whipped with different items, and was shot with a B.B. gun. Police observed that A.D.'s room only had a mop bucket and that there was a lock on the outside of the door and a camera inside his room.

{¶ 4} On numerous occasions, during that four-year period, A.D. ran away from home, the police were called, and social workers visited the home. One social worker observed that A.D. was chained by his ankle to Gunderman's belt loop. She also noted that A.D. looked emaciated and had bruising and multiple scars on his body. When the Cuyahoga County Division of Child and Family Services ("CCDCFS") interviewed A.D. and his siblings, A.D. indicated that he was locked in his room, which his siblings verified. CCDCFS also noted that there were locks on the windows and door in A.D.'s room. CCDCFS advised the family to place alarms on the windows and doors to alert them if A.D. tried to leave the home instead of locking him in his room. Instead of removing A.D. from the home, CCDCFS suggested alternative at-home care methods and programs to the family to assist them.

{¶ 5} Each time that A.D. ran away or made allegations against Pascale and Gunderson, Pascale lied to the doctors and police, stating that A.D. suffered from autism, had an eating disorder, and suffered from psychological problems and behavior issues. Pascale also indicated that A.D. was locked in his room because of his tendency to run away.

{¶ 6} Once A.D. was removed from his mother's care and placed in foster care, he began making disclosures about the abuse he suffered at the hands of Pascale and Gunderman. The police opened an investigation and learned that A.D. was locked in his room, locked in the basement, choked by Gunderman, shot by a

B.B. gun, served food that Gunderman stepped or urinated in, and stripped naked and beaten with belts and other objects. The police also interviewed another child that lived in the house with A.D., and the child stated that they could hear A.D. screaming from the beatings. The child also confirmed A.D.'s statements that Pascale and Gunderson put "nasty" stuff in A.D.'s food. The child also stated that he was punished for being nice to A.D. and instructed to hit A.D.

{¶ 7} Police interviewed Gunderman's son, D.G., who stated that A.D was not fed when everyone else ate dinner and was locked in the basement. D.G. heard A.D. pleading from the vent to be let out. D.G. also stated that he could hear A.D. being beaten in the house while he was outside. Joseph Wint ("Wint"), a man who temporarily lived in the house, told police that he took a video of A.D., where A.D. is pleading repeatedly to eat. Wint stated that A.D. was forced to urinate and defecate in a bucket in his bedroom. He heard A.D. being beaten.

{¶ 8} On October 12, 2021, Pascale was charged in a 20-count indictment. On September 21, 2022, Pascale pleaded guilty to 12 of the 20-counts in a plea agreement with the state. On October 26, 2022, Pascale was sentenced to 62 to 67 and one-half years in prison. At the sentencing hearing, the trial court stated:

> Before imposing sentence, I will note for the record that I have considered the record, the oral statements made here today, the pre-sentence investigation reports as to each offender, the mitigation penalty reports as to each offender, the plea negotiations, and the victim impact statements, both today and that I received on a prior day.

I have reviewed and have considered the certification on behalf of Ms. Pascale with regard to the IOP program as well as mental health services and the letters received on her behalf.

The Court must and is formulating its decision based upon the overriding principles and purposes of felony sentencing, namely to protect the public from future crime by you and to punish you using the minimum sanctions that the Court determines accomplishes those purposes.

I have considered the need for incapacitation, deterrence and rehabilitation. I have considered the seriousness and recidivism factors relevant to the offenses and the offenders, and I'm ensuring that the sentence imposed does not demean the seriousness of the offenses, the impact on this victim, and is consistent with other similar offenses committed by like offenders.

Finally, the sentence is not based upon any impermissible purposes; namely either offenders' race, ethnic background, gender or religion.

I had the opportunity to meet [A.D.] and his little brother. And I met [A.D.] when he was 10-years old, and he just seems like a really nice little boy, despite what you did to him.

The crimes you pled guilty to started when he was 4 years old, when he should have been meeting his first friends, developing those friendships, those relationships; smiling and laughing and playing practical jokes on his siblings, on his friends, playing basketball, learning the game, learning football, baseball, playing video games or a musical instrument, but instead, you chose to torture him.

The Court finds that the nature of these offenses are the most serious forms of the offenses; that the defendants tortured and permanently injured an innocent child for over four years. I don't know how long this lasted or how old he was when it started.

If I had the option, I would sentence you to life without the possibility of parole, but since I don't, there can be no justice unless this Court removes both of you from our society for the maximum time allowable under the law in this plea agreement.

[A.D] is scarred, both physically and psychologically, and these scars are going to haunt him forever.

Danielle Pascale, you are hereby sentenced to the aggregate term of incarceration of 62 years to 67 and a half years.

Further in support of the imposition of consecutive sentences, this Court makes the following findings; that consecutive sentences are necessary to protect the public from future crimes and to punish both of you, and that the consecutive sentences are not [disproportionate] to the seriousness of the offenders' conduct and the danger they pose to the public.

The Court makes the further finding that at least two of the multiple offenses were committed as part of a course of conduct, and that the harm caused by the offenses was so great or unusual that a single prison term cannot adequately reflect the seriousness of the offenders' conduct.

I will now go through each individual count and sentence for each, starting with Danielle Pascale.

As to Count 1, kidnapping, a felony of the first degree, you are hereby sentenced under the Reagan Tokes Law to 11 years as a minimum sentence and 16 and a half years as a maximum sentence.

I am imposing a $20,000 fine on this count.

As to Count 13, kidnapping, you are hereby sentenced to an 11-year sentence.

Count 17, kidnapping, you are hereby sentenced to an 11-year sentence.

Count 2, endangering children, a felony of the second degree, you are hereby sentenced to 8 years.

As to Count 3, endangering children, a misdemeanor of the first degree, you are hereby sentenced to 6-months.

Count 4, endangering children, a felony of the third degree, you are hereby sentenced to 36-months.

Endangering children, as charged in Count 5, a felony of the third degree, you are hereby sentenced to 36-months.

As to Count 15 as charged in the indictment, endangering children, a felony of the third degree, you are hereby sentenced to 36-months.

Count 7, endangering children, a felony of the third degree, you are hereby sentenced to 36-months.

Count 8, endangering children, you [sic] a felony of the third degree, you are hereby sentenced to 36-months.

Count 16, endangering children, you are hereby sentenced to 36-months. This is a third degree felony.

Count 11, as charged in the indictment is tampering with evidence, a felony of the third degree. You are hereby sentenced to 36-months.

Counsel: Judge, I don't mean to interrupt, but that one only applies to the —

Court: Which one, the tampering?

Counsel: Yes. Oh, I'm sorry. I'm sorry.

Court: Tampering with evidence, as charged in Count 11, 36-months.

Again, for an aggregate sentence of 62-years to 67 and a half years as these counts will run consecutive to each other, and the minimum and maximum sentence is controlled by Count 1, the highest degree felony, the felony of the first degree, under Reagan Tokes.

(Tr. 131-137.)

{¶ 9} Pascale filed this appeal assigning seven errors for our review:

1. The trial court erred when it sentenced appellant's misdemeanor conviction consecutively to her felony sentences;

2. The trial court erred when it permitted a non-victim non-party individual to address the court at the sentencing hearing and considered the statements in issuing its sentence;

3. The trial court erred when it first imposed consecutive sentences as an impermissible sentencing package prior to issuing a sentence on each individual count;

4. The record does not support the consecutive sentence imposed upon appellant;

5. The imposition of an indefinite sentence against the appellant under the Reagan Tokes sentencing scheme was contrary to law;

6. Appellant's indefinite sentence impose under the Reagan Tokes sentencing scheme violates appellant's rights under the United States Constitution applied to the state of Ohio through the Fourteenth Amendment and the Ohio Constitution as it denies Appellant due process of law; violates the right to equal protection, violated 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; and

7. Appellant'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 it imposed sentencing.

II. Misdemeanor Sentence Served Consecutively with Felony Sentences

{¶ 10} In Pascale's first assignment of error, she argues that the trial court erred by sentencing her misdemeanor conviction to be served consecutively with her

felony sentences. The state concedes this error, but asks that this court allow the trial court to nunc pro tunc the sentencing journal entry to accurately reflect the sentence imposed. The state also argues that actual sentence reflects that Pascale's misdemeanor sentence and felony sentences are to be served concurrently, and the trial court committed a harmless error.

{¶ 11} "Proper use of a nunc pro tunc entry is limited to correcting a clerical error in a judgment or order so that the record reflects what the court actually did or decided." *State v. Aarons*, 8th Dist. Cuyahoga No. 110313, 2021-Ohio-3671, ¶ 26. In our instant case, there is not a clerical error, but the trial court erred in the sentencing of Pascale at the sentencing hearing. The journal entry accurately reflects what the trial court stated at the sentencing hearing. Thus, a nunc pro tunc entry would not be proper in this case.

{¶ 12} "A sentencing error renders the sentence voidable." *State v. Griffin*, 8th Dist. Cuyahoga Nos. 110474, 110475, and 110476, 2021-Ohio-4128, ¶ 7, citing *State v. Henderson*, 161 Ohio St.3d 285, 2020-Ohio-4784, 162 N.E.3d 776; *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248. "A voidable judgment may be set aside if successfully challenged on direct appeal." *Id.*, citing *Harper* at ¶ 26.

{¶ 13} Pascale did not object to the trial court's error at sentencing. "When a party fails to object to an error in the trial court, a reviewing court may only notice

plain errors or defects affecting substantial rights." Crim.R. 52(B). *Id*. at ¶ 8, citing *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306 at ¶ 15.

{¶ 14} When correcting a plain error, we are bound by three limitations: first, there must be an error that is a deviation from the legal rule; second, the error must be an obvious defect in the trial proceedings; and third, the error must have affected the outcome of trial or proceedings. *Id*. at ¶ 8.

{¶ 15} "In the context of felony sentencing, an 'outcome determinative' error would be a sentence that is clearly and convincingly contrary to law." R.C. 2953.08(G)(2)(b). *Id*., citing *State v. Kellogg*, 2013-Ohio-4702, 1 N.E.3d 457, ¶ 8 (8th Dist.). "Reversal is warranted if the party asserting plain error can show that the outcome 'would have been different absent the error.'" *Id*., quoting *Payne* at ¶ 17.

{¶ 16} First, in our instant case, the trial court's sentence is a deviation from the legal rule and contrary to law. "A trial court may not impose consecutive sentences for any set of felony and misdemeanor convictions." R.C. 2929.41(B)(1); *State v. Wilkins*, 8th Dist. Cuyahoga Nos. 108101 and 108102, 2019-Ohio-4679, ¶ 7. Second, the trial court's defect is obvious from the transcript. However, the error did not affect the outcome of the trial or proceedings. Pascale was not sentenced to more time as a result of the trial court's sentencing error. Reversal is only appropriate if Pascale could demonstrate that the outcome would have been different absent the trial court's error. Pascale has not demonstrated that she would

serve less time. The total years of incarceration that Pascale must serve does not change absent the defect.

{¶ 17} Therefore, Pascale's first assignment of error is overruled.

III. Non-victim Testimony

{¶ 18} In Pascale's second assignment of error, she contends that the trial court erred when it permitted Michael Bokmiller ("Bokmiller"), a representative of CCDCFS, to address the court at the sentencing hearing and considered Bokmiller's statement in issuing a sentence. According to R.C. 2929.19(A), "either the victim or the victim's representative, and any other person with approval of the trial court, may speak at the sentencing hearing." *State v. Stilson*, 7th Dist. Mahoning No. 08 MA 143, 2010-Ohio-607, ¶ 23. "It is within the trial court's discretion to allow any other person/persons to speak at the hearing." *Id.*, citing *State v. Bunch*, 7th Dist. Mahoning No. 02CA196, 2005-Ohio-3309, ¶ 221.

{¶ 19} Additionally, "'R.C. 2929.19 grants broad discretion to the trial court to consider any information relevant to the imposition of a sentence.'" *State v. Franklin*, 8th Dist. Cuyahoga No. 107482, 2019-Ohio-3760, ¶ 31, quoting *State v. Asefi*, 9th Dist. Summit No. 26931, 2014-Ohio-2510, ¶ 8.

> At a sentencing hearing, the offender, the prosecuting attorney, the victim or the victim's representative, and any other person with the court's approval may present information relevant to the imposition of the sentence in a case. R.C. 2929.19(A). Before imposing the sentence, the trial court must consider the information presented by such persons, along with the record and any PSI or victim impact statement. R.C. 2929.19(B).

State v. McManus, 8th Dist. Cuyahoga No. 101922, 2015-Ohio-2393, ¶ 30.

{¶ 20} Pascale incorrectly argues that the trial court erred when it permitted Bokmiller's statements at sentencing. By allowing Bokmiller to address the court, the trial court was in compliance with R.C. 2929.19(A). Pascale also argues that she was prejudiced by Bokmiller's statements and it resulted in her receiving the maximum sentence. The record reveals that the trial court considered the record, all oral statements, the presentence-investigation report, the mitigation report, the plea negotiations, and the victim-impact statements. (Tr. 131.) Pascale does not point to anything in the record, in isolation, that specifically prejudiced her because of Bokmiller's statements. The trial court considered Bokmiller's statements because they may have been relevant to the imposition of Pascale's sentence.

{¶ 21} Therefore, Pascale's second assignment of error is overruled.

IV. Consecutive Sentences

A. Standard of Review

{¶ 22} "R.C. 2953.08(G)(2) provides that when reviewing felony sentences, a reviewing court may overturn the imposition of consecutive sentences where the court 'clearly and convincingly' finds that (1) 'the record does not support the sentencing court's findings under R.C. 2929.14(C)(4),' or (2) 'the sentence is otherwise contrary to law.'" *State v. Saxon*, 8th Dist. Cuyahoga No. 111493, 2023-Ohio-306, ¶ 18.

> Clear and convincing evidence is that measure or degree of proof which is more than a mere "preponderance of the evidence," but not to the extent of such certainty as is required "beyond a reasonable doubt" in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.

State v. Marcum, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 22, quoting *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

{¶ 23} In *State v. Gwynne*, Slip Opinion No. 2022-Ohio-4607, ¶ 18-23, the Ohio Supreme Court clarified how consecutive sentences should be reviewed and held that "consecutive-sentence findings are not simply threshold findings that, once made, permit any amount of consecutively stacked individual sentences." The court also held that "appellate review of consecutive sentences under R.C. 2953.08(G)(2) does not require appellate courts to defer to the sentencing court's findings in any manner." *Id.* at ¶ 23.

{¶ 24} The court in *Gwynne* explained:

> [T]he appellate standard of review under R.C. 2953.08(G)(2) is not whether the trial court abused its discretion when it imposed consecutive sentences and intermediate deference to the trial court's findings is not required. An appellate court's review of the record and findings is de novo with the ultimate inquiry being whether it clearly and convincingly finds — in other words, has a firm conviction or belief — that the evidence in the record does not support the consecutive-sentence findings that the trial court made. To reiterate, R.C. 2953.08(G)(2)'s clear-and-convincing standard does not permit —much less require or expect — an appellate court to modify or vacate an order of consecutive sentences only when it is unequivocally certain that the record does not support the findings. It requires that

> the appellate court vacate or modify the order if, upon review of the record, the court is left with a firm belief or conviction that the findings are not supported by the evidence.
>
> When reviewing the record under the clear-and-convincing standard, the first core requirement is that there be some evidentiary support in the record for the consecutive-sentence findings that the trial court made. If after reviewing the applicable aspects of the record and what, if any, evidence it contains, the appellate court finds that there is no evidence in the record to support the consecutive sentence findings, then the appellate court must reverse the order of consecutive sentences. A record that is devoid of evidence simply cannot support the findings required by R.C. 2929.14(C)(4); there must be an evidentiary basis upon which these findings rest.
>
> The second requirement is that whatever evidentiary basis there is, that it be adequate to fully support the trial court's consecutive-sentence findings. This requires the appellate court to focus on both the quantity and quality of the evidence in the record that either supports or contradicts the consecutive-sentence findings. An appellate court may not, for example, presume that because the record contains some evidence relevant to and not inconsistent with the consecutive-sentence findings, that this evidence is enough to fully support the findings. As stated above, R.C. 2953.08(G)(2) explicitly rejects this type of deference to a trial court's consecutive-sentence findings. Instead, a de novo standard of review applies to whether the evidence in the record supports the findings that were made. Under this standard, the appellate court is, in fact, authorized to substitute its judgment for the trial court's judgment if the appellate court has a firm conviction or belief, after reviewing the entire record, that the evidence does not support the specific findings made by the trial court to impose consecutive sentences, which includes the number of consecutive terms and the aggregate sentence that results.

Gwynne at ¶ 27-29.

B. Law and Analysis

{¶ 25} In Pascale's third assignment of error, she argues that the trial court erred when it imposed consecutive sentences as a sentencing package before issuing

a sentence on each individual count. At the sentencing hearing, the trial court stated, "Danielle Pascale, you are hereby sentenced to the aggregate term of incarceration of 62-years to 67 and a half years." (Tr. 134.) Then, the trial court went through each individual count and its corresponding sentence. (Tr. 134-136.) Pascale argues that this order is impermissible, citing *State v. Newman*, 8th Dist. Cuyahoga No. 107060, 2020-Ohio-658, to support her contention.

{¶ 26} "The 'sentencing package doctrine' is a federal doctrine that requires a sentencing court to consider the sanctions imposed on multiple offenses as the components of a single, comprehensive sentencing plan." *State v. Jones*, 8th Dist. Cuyahoga No. 103017, 2016-Ohio-932, ¶ 20, citing *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824, ¶ 5. "Pursuant to this doctrine, an error within the sentencing package as a whole, even if only on one of multiple offenses, may require modification or vacation of the entire sentencing package due to the interdependency of the sentences for each offense." *Id.*, citing *id.* at ¶ 6.

{¶ 27} "By contrast, Ohio's felony sentencing scheme is designed to focus the judge's attention on one offense at a time. *Id.* at ¶ 21, citing *State v. Holdcroft*, 137 Ohio St. 3d 526, 2013-Ohio-5014, 1 N.E.3d 382, ¶ 6. "In Ohio, individual sentences are not interdependent. A sentencing judge has discretion to impose any individual sentence that complies with applicable sentencing statutes." *Newman* at ¶ 33, citing *State v. Franklin*, 8th Dist. Cuyahoga No. 107482, 2019-Ohio-3760, ¶ 41.

{¶ 28} We determine that Pascale's arguments are misplaced. The trial court did not impose a sentencing package. The trial court sentenced Pascale on each individual count that she pleaded guilty to. The trial court simply stated the total number of years of imprisonment before sentencing on each count. The trial court did not consider the sanctions imposed on multiple offenses as the components of a single, comprehensive sentencing plan.

{¶ 29} Therefore, Pascale's third assignment of error is overruled.

{¶ 30} In Pascale's fourth assignment of error, she argues that the record does not support the consecutive sentence imposed upon her. Under Ohio law, sentences are presumed to run concurrently unless the trial court makes the required findings under R.C. 2929.14(C)(4). *State v. Reindl*, 8th Dist. Cuyahoga Nos. 109806, 109807, and 109808, 2021-Ohio-2586, ¶ 14; *State v. Gohagan*, 8th Dist. Cuyahoga No. 107948, 2019-Ohio-4070, ¶ 28.

{¶ 31} To impose consecutive sentences, the trial court must find that (1) consecutive sentences are necessary to protect the public from future crime or to punish the offender, (2) consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and (3) at least one of the following applies:

> (a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.

> (b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.
>
> (c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

R.C. 2929.14(C)(4)(a)-(c).

{¶ 32} Pascale concedes that the trial court made the necessary findings in accordance with the statutes. Pascale also concedes that the record likely included some evidentiary support for the imposition of consecutive sentences. However, Pascale argues that the court did not consider her mental health, work history, care provided to other children, acceptance of responsibility, IOP programs, and lack of prior criminal record.

{¶ 33} The trial court stated at the sentencing hearing:

> Before imposing sentence, I will note for the record that I have considered the record, the oral statements made here today, the pre-sentence investigation reports as to each offender, the mitigation penalty reports as to each offender, the plea negotiations, and the victim impact statements, both today and that I received on a prior day.
>
> I have reviewed and have considered the certification on behalf of Ms. Pascale with regard to the IOP program as well as mental health services and the letters received on her behalf.

(Tr. 131-132.)

{¶ 34} Pascale's arguments are misplaced, because the trial court stated that it did consider all of the reports. Additionally, Pascale argues that her status as a single mother to six children should have been considered, as well as the fact that she took great care of her other five children. The court finds this argument to be unhelpful to Pascale. The fact that she was able to take care of her other five children, but severely and brutally abused one child demonstrates that Pascale had enough cognitive ability to understand how to care for children appropriately but chose not to do so with A.D.

{¶ 35} "When reviewing the record under the clear-and-convincing standard, the first core requirement is that there be some evidentiary support in the record for the consecutive-sentence findings that the trial court made." *Gwynne*, Slip Opinion No. 2022-Ohio-4607, ¶ 28. Pascale's actions of abusing A.D. for at least four years, from beatings, starvation, lying to authorities and medical professionals about A.D.'s condition, and locking A.D. in a room and basement without adequate access to a bathroom to relieve his waste and bathe are evidentiary support for the findings the trial court made.

{¶ 36} The record fully supports the trial court's imposition of consecutive sentences. Therefore, Pascale's fourth assignment of error is overruled.

V. Reagan Tokes

{¶ 37} In Pascale's fifth and sixth assignments of error, she argues that the imposition of an indefinite sentence under Reagan Tokes is contrary to law and in

violation of her due process rights, equal protections rights, the separation-of-powers doctrine, right to a jury trial, and does not provide fair warning.

{¶ 38} Pascale's assignments of error are overruled pursuant to *State v. Hacker*, Slip Opinion No. 2023-Ohio-2535, ¶ 41, where the Supreme Court held that "the Reagan Tokes Law is constitutional."

{¶ 39} In Pascale's seventh assignment of error, she argues that her sentence is contrary to law because the trial court failed to comply with the required notices contained in R.C. 2929.19(B)(2)(c) when imposing her sentence. Specifically, she argues that prior to imposing a sentencing under Reagan Tokes, the trial court is required to give all advisements set forth in R.C. 2929.19(B)(2)(c).

{¶ 40} R.C. 2929.19(B)(2)(c) states:

> (2) Subject to division (B)(3) of this section, if 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.

{¶ 41} "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. 110616, 2022-Ohio-1666, ¶ 25. In *Gates*, the trial court informed the defendant only at the plea hearing. However, in our case, Pascale was informed at the plea hearing and at the time of sentencing.

{¶ 42} The trial court stated at the plea hearing:

> Senate Bill 201, the Reagan Tokes law, significantly altered the sentencing structure for many of Ohio's most serious felonies. Senate Bill 201 implements an indefinite sentencing system for nonlife Felonies of the 1st Degree or 2nd Degree.

> The sentencing judge will impose a minimum term from within the currently established sentencing range and the maximum term of an additional 50 percent of the minimum term imposed.
>
> Release is presumed to occur at the expiration of the minimum term; however, the Department of Rehabilitation and Corrections [sic] may under certain circumstances rebut that release presumption and impose additional prison time up to the maximum term.
>
> DRC may also reduce the minimum term by 5 to 15 percent for exceptional conduct or adjustment to incarceration with approval of the sentencing court.

(Tr. 18.)

{¶ 43} The trial court continued, stating:

> So I'm going to advise both of you on the counts that you are pleading to that are the same counts and then I'll diverge, okay? So we'll start with Counts 1 and 2. Those fall under the Reagan Tokes law, that new law that I just read to you.
>
> Instead of the Court imposing a certain number of years, one, two, three, four, five, whatever the Court determines is an appropriate sentence, I now have to sentence it on a range. So the minimum term is the number that I would have sentenced you to prior to the law changing. Okay? That's the number that this Court feels is an appropriate sentence for that specific count.
>
> Now, I have to give a range and it gives the Ohio Department of Rehabilitation and Corrections [sic] the opportunity to hold you in prison up to the maximum term. That typically would happen if you are a problem in the jail, if you don't follow the rules, if you get in trouble all the time, if you cause disturbances, if you're not doing your programming. Those are the scenarios that I can see them justifying additional time up to the maximum term.
>
> We do also have the opportunity of reducing your minimum term by 5 to 15 percent for exceptional conduct or adjustment to incarceration.

(Tr. 19-20.)

{¶ 44} The trial court restated these required notices also at the sentencing hearing:

> At the time of your plea, we went over the new sentencing structure for Ohio's most serious felonies that do not carry a life sentence.
>
> I went over with you and I confirmed your understanding of the Reagan Tokes Law, Senate Bill 201. I will now do that again.
>
> Senate Bill 201, entitled the Reagan Tokes Law, significantly alters the sentencing structure for Ohio's most serious felonies of the first and second degree that do not carry with them a life sentence.
>
> The sentencing judge will impose a minimum term from within the currently established sentencing range, and a maximum term of an additional 50-percent of the minimum term imposed.
>
> Release is presumed to occur at the expiration of the minimum term, however, the Department of Rehabilitation and Corrections [sic] may, under certain circumstances, rebut that presumption and impose additional time up to the maximum term.
>
> DRC may also reduce the minimum term by 5 to 15-percent for exceptional conduct or adjustment to incarceration, with approval of the sentencing court.
>
> Senate Bill 201 went into effect on March 22, 2019, and applies to all non-life felonies of first and second degree that occurred after the effective date.
>
> Ms. Pascale, it is my understanding that Count 13, kidnapping, and Count 17, kidnapping, do not fall under the Reagan Tokes sentencing structure because they occurred prior to March 22nd of 2019.
>
> Again, at the time of your plea, it was indicated on the record, Ms. Pascale, the maximum prison term that you may receive in this case is a minimum term of 62-years and a maximum term of 67-and a half years.

(Tr. 60-61.)

{¶ 45} We determine from the record that the trial court complied with the requirements of R.C. 2929.19(B)(2)(c). Therefore, Pascale's seventh assignment of error is overruled.

{¶ 46} 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.

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ANITA LASTER MAYS, ADMINISTRATIVE JUDGE

SEAN C. GALLAGHER, J., and
FRANK DANIEL CELEBREZZE, III, J., CONCUR