

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellant, :
 : No. 112116
 v. :
 :
 LUIS A. CANDELARIO, :
 :
 Defendant-Appellee. :

JOURNAL ENTRY AND OPINION

**JUDGMENT: REVERSED, VACATED, AND REMANDED
RELEASED AND JOURNALIZED: August 24, 2023**

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-21-661034-B

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Daniel T. Van, Assistant Prosecuting Attorney, *for appellant*.

Culleen Sweeney, Cuyahoga County Public Defender, and Aaron T. Baker, Assistant Public Defender, *for appellee*.

EMANUELLA D. GROVES, J.:

{¶ 1} Defendant-appellee Luis A. Candelario pled guilty to involuntary manslaughter with a one-year firearm specification as charged in Count 10 of the indictment. The remaining counts for which Candelario was indicted were

dismissed. The trial court imposed an 11-year prison sentence on the base count and a one-year firearm specification running prior and consecutive to the base count. The charge related to the offense occurred on or about March 13, 2021. The trial court failed to impose the required sentence under S.B. 201, the Reagan Tokes Law.¹

{¶ 2} The state appeals and presents the following error for our review:

Assignment of Error

The trial court plainly erred when it found S.B. 201 to be unconstitutional and did not impose an indefinite sentence pursuant to S.B. 201.

Law and Analysis

{¶ 3} The state contends that it was plain error for the trial court to not impose the sentence required under S.B. 201. A sentence imposed that is contrary to law is plain error. *State v. Dowdell*, 8th Dist. Cuyahoga No. 111026, 2022-Ohio-2956, ¶ 9. The state's claim is well taken.

{¶ 4} The parameters of appellee's argument below, if made, are not in the record before us. In his brief appellee raises constitutional challenges that have already been refuted by this court in *State v. Delvallie*, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.). The Supreme Court made the same finding regarding S.B. 201 in *State v. Hacker*, Slip Opinion No. 2023-Ohio-2535. Accordingly, pursuant to *Hacker*, the trial court must impose the indefinite sentence required under S.B. 201.

¹ Appellant elected not to file a transcript. However, appellee agrees with appellant's recitation of the facts as stated in its brief, except, he maintains that an S.B. 201 sentence was not required.

We sustain the state's assignment of error and remand for resentencing consistent with S.B. 201.

{¶ 5} Accordingly, we sustain the state's sole assignment of error, vacate the 11-year prison sentence imposed for involuntary manslaughter, and remand this matter to the trial court for the purpose of imposing an indefinite sentence in accordance with the law.

{¶ 6} This cause is reversed, vacated, and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover from appellee 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.

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

EMANUELLA D. GROVES, JUDGE

FRANK DANIEL CELEBREZZE, III, P.J., and
KATHLEEN ANN KEOUGH, J., CONCUR