

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellant, :
 : No. 112125
 v. :
 :
 CHARLES POOLE, JR., :
 :
 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 22-666947-A

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 Noelle A. Powell, Assistant Public Defender, *for appellee*.

EMANUELLA D. GROVES, J.:

{¶ 1} Defendant-appellee Charles Poole, Jr. pled guilty to Count 1, trafficking offenses felony one with schoolyard and forfeiture specifications and

Count 5, having weapons while under disability.¹ The trial court imposed a sentence of three years on Count 1 and two years on Count 5. The trial court failed to impose the required sentence under S.B. 201, the Reagan Tokes Law.

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

Assignment of Error

The trial court plainly erred when [it] did not reserve 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} 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. We sustain the state's assignment and remand for resentencing consistent with S.B. 201.

{¶ 5} Accordingly, we sustain the state's sole assignment of error, vacate the three-year prison sentence imposed on Count 1, two-year prison

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

sentence on Count 5 and remand this matter to the trial court for the purpose of imposing an indefinite sentence in accordance with the law.

{¶ 6} This case 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
EILEEN A. GALLAGHER, J., CONCUR