

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellant,	:	No. 112102
	:	
v.	:	
	:	
JUSTIN ABRAMS,	:	
	:	
Defendant-Appellee.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: August 31, 2023

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-22-671650-A

Appearances:

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

Cullen Sweeney, Cuyahoga County Public Defender, and John T. Martin, Assistant Public Defender, *for appellee*.

MICHELLE J. SHEEHAN, P.J.:

{¶ 1} Plaintiff-appellant, the state of Ohio, appeals from a judgment of the trial court finding S.B. 201, the Reagan Tokes Law, unconstitutional and sentencing defendant-appellee, Justin Abrams, to a definite sentence, contrary to the provisions

of the Reagan Tokes Law. Pursuant to *State v. Hacker*, Slip Opinion No. 2023-Ohio-2535, we reverse the trial court’s decision and remand the matter for further proceedings.

{¶ 2} On October 6, 2022, Abrams pleaded guilty to felonious assault, a second-degree felony, accompanied with a firearm specification, and domestic violence, a fourth-degree felony. The court imposed seven years of prison on the felonious assault offense and one year on the firearm specification, to be served consecutively. The court also imposed a concurrent 18-month term on the domestic violence offense.

{¶ 3} It is undisputed that, pursuant to the Reagan Tokes Law, the trial court was required to impose an indefinite sentence for Abrams’s second-degree felony offense of felonious assault. The trial court, however, declared the Reagan Tokes Law unconstitutional and imposed a definite seven-year term for the offense instead.

{¶ 4} The state now appeals, contending in its sole assignment of error that “the trial court plainly erred when [it] did not impose an indefinite sentence pursuant to S.B. 201.”

{¶ 5} Pursuant to R.C. 2953.08(B)(2), the state has the right to appeal a sentence that is contrary to law. A sentence that fails to impose a mandatory

provision is contrary to law. *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶ 21.

{¶ 6} In response to the state’s appeal, Abrams sets forth several arguments in support of the trial court’s determination that the Reagan Tokes Law is unconstitutional. In *Hacker*, Slip Opinion No. 2023-Ohio-2535, the Supreme Court of Ohio addressed similar arguments and found the Reagan Tokes Law to be constitutional. Pursuant to *Hacker*, the definite sentence imposed by the trial court is contrary to law. The state’s sole assignment of error is sustained. Accordingly, we reverse the trial court’s judgment and remand the matter for resentencing in accordance with the provisions of the Reagan Tokes Law.

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

It is ordered that appellant recover of appellee 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.

MICHELLE J. SHEEHAN, PRESIDING JUDGE

LISA B. FORBES, J., and
MARY J. BOYLE, J., CONCUR