

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellant, :
 : No. 112328
 v. :
 :
 LONTELL TURNER, :
 :
 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-22-672010-A

Appearances:

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

Joseph V. Pagano, *for appellee*.

SEAN C. GALLAGHER, J.:

{¶ 1} The state of Ohio appeals the trial court's judgment that found S.B. 201, the Reagan Tokes Law, unconstitutional and imposed a definite sentence, instead of an indefinite sentence, for a qualifying second-degree felony offense. Upon the authority of *State v. Hacker*, Slip Opinion No. 2023-Ohio-2535, we

reverse the trial court's judgment and remand the matter for resentencing in accordance with the Reagan Tokes Law.

{¶ 2} Turner entered a guilty plea to felonious assault, a felony of the second degree, and tampering with evidence, a felony of the third degree, each with forfeiture specifications. As to the felonious-assault offense, the trial court determined the indefinite-sentencing provisions of S.B. 201 to be unconstitutional. The trial court imposed a definite prison term of two years on each count with the counts run concurrent to each other and with another case.

{¶ 3} The state timely appealed, arguing that the trial court plainly erred when it found the Reagan Tokes Law to be unconstitutional and failed to impose an indefinite sentence for the felonious-assault offense. 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 may be appealed because such a sentence is "contrary to law." *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶ 21.

{¶ 4} Under the Reagan Tokes Law, qualifying first- and second-degree felonies committed on or after March 22, 2019, are subject to the imposition of indefinite sentences. Recently, in *Hacker*, the Supreme Court of Ohio rejected facial constitutional challenges to the Reagan Tokes Law. *Id.* at ¶ 41. The Supreme Court determined that the Reagan Tokes Law does not violate the separation-of-powers doctrine, the right to a jury trial, or offenders' due-process rights as raised under

facial challenges.¹ *Id.* at ¶ 25, 28, 29, and 40. The arguments presented by Turner in this case do not present novel issues or any new theory challenging the constitutional validity of any aspect of the Reagan Tokes Law left unaddressed by the Ohio Supreme Court’s decision in *Hacker*.

{¶ 5} Accordingly, we reverse the trial court’s judgment and remand for resentencing on the felonious-assault offense in accordance with the Reagan Tokes Law. *See* R.C. 2929.14(A)(2)(a) and 2929.144.

It is ordered that appellant recover from 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.

SEAN C. GALLAGHER, JUDGE

LISA B. FORBES, P.J., and
MICHAEL JOHN RYAN, J., CONCUR

¹ In addressing the due-process challenges presented in *Hacker*, the Supreme Court found that the Reagan Tokes Law “is not void for vagueness” and “is not facially unconstitutional, because it provides that offenders receive a hearing before they may be deprived of their liberty interest.” *Id.* at ¶ 40.