

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101853

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RALPH E. KENT

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED, VACATED, REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-584512-A

BEFORE: S. Gallagher, J., Boyle, P.J., and Laster Mays, J.

RELEASED AND JOURNALIZED: April 23, 2015

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

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SEAN C. GALLAGHER, J.:

{¶1} Appellant Ralph Kent appeals a sentence imposed for a rape offense. Upon review, we reverse the judgment of the trial court, vacate Kent's sentence, and remand the case to the trial court for resentencing under 2011 Am.Sub.H.B. No. 86 ("H.B. 86"), effective September 30, 2011.

{¶2} On April 18, 2014, Kent was indicted on charges of rape and kidnapping after a DNA hit was obtained from a rape kit collected from a 1994 rape incident. On July 29, 2014, Kent entered a plea of guilty to rape in violation of R.C. 2907.02(A)(2), a felony of the first degree, and its accompanying aggravated-felony specification. The kidnapping count was nolle. The trial court held an Am.Sub.H.B. No. 180 hearing and classified Kent as a sexual predator. The court applied the sentencing law in effect at the time the offense was committed and imposed an indefinite prison term of a minimum of 15 years to a maximum term of 25 years, which was ordered to run concurrent with prison sentences Kent was already serving in other cases.

{¶3} Kent timely filed this appeal, claiming the trial court erred when it imposed a sentence not authorized by law. Specifically, Kent argues that he should have been sentenced to a definite term of between 3 and 11 years in prison pursuant to R.C. 2929.14(A)(1), as amended by H.B. 86, which was in effect at the time he was sentenced. He claims that Section 4 of H.B. 86 explicitly states that it applies to persons sentenced on or after its effective date

and to persons to whom R.C. 1.58(B) applies. R.C. 1.58(B) provides: "If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended." Kent argues he would have been subject to a reduced punishment had he been sentenced pursuant to H.B. 86, rather than the law from the time of the offense. See R.C. 2929.14(A)(1), former R.C. 2929.11, and former R.C. 2929.142.

{¶4} In *State v. Taylor*, 138 Ohio St.3d 194, 2014-Ohio-460, 5 N.E.3d 612, the Ohio Supreme Court held that "in accordance with R.C. 1.58(B) and the uncodified portion of Section 4 of H.B. 86, the determining factor on whether the provisions of H.B. 86 apply to an offender is not the date of the commission of the offense but rather whether sentence has been imposed." Guided by *Taylor*, this court has repeatedly concluded that a defendant in Kent's position is to be sentenced under the sentencing provisions of H.B. 86 in effect at the time of sentencing. See, e.g., *State v. Thomas*, 8th Dist. Cuyahoga No. 101202, 2015-Ohio-415; *State v. Girts*, 8th Dist. Cuyahoga No. 101075, 2014-Ohio-5545; *State v. Steele*, 8th Dist. Cuyahoga Nos. 101139 and 101140, 2014-Ohio-5431; *State v. Jackson*, 8th Dist. Cuyahoga No. 100877, 2014-Ohio-5137, stay granted by 141 Ohio St.3d 1452, 2015-Ohio-239, 23 N.E.3d 1195.

{¶5} The state presents a tangible argument that R.C. 1.58(B) should not be applied to offenses that occurred prior to the effective date of Am.Sub.S.B. 2

("S.B.2"), effective July 1, 1996, because R.C. 1.58(B) was explicitly excluded from S.B. 2 and H.B. 86 is an amendment to S.B. 2. We are not inclined to adopt this view, and until the Ohio Supreme Court determines otherwise, we shall continue to adhere to the precedent of this court.

{¶6} The sole assignment of error is sustained. Kent's sentence is vacated, and the case is remanded to the trial court for the limited purpose of resentencing under the sentencing provisions of H.B. 86.

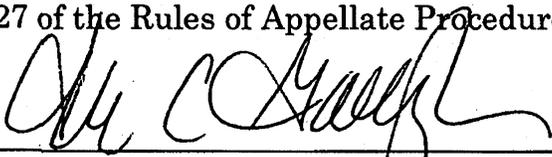
{¶7} Judgment reversed; sentence vacated, and case remanded to the lower court for further proceedings consistent with this opinion.

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.

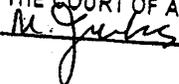
A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.


SEAN C. GALLAGHER, JUDGE

MARY J. BOYLE, P.J., and
ANITA LASTER MAYS, J., CONCUR

FILED AND JOURNALIZED
PER APP.R. 22(C)

APR 23 2015

CUYAHOGA COUNTY CLERK
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