

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 2024-0108
Plaintiff-Appellant,	:	
v.	:	On Appeal from the
	:	Mahoning County Court of Appeals,
DANIEL STAFFREY,	:	Seventh Appellate District
	:	
Defendant-Appellee.	:	COA Case No. 23 MA 34

**MERIT BRIEF OF AMICUS CURIAE OFFICE OF THE OHIO PUBLIC DEFENDER
IN SUPPORT OF APPELLEE DANIEL STAFFREY**

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STATEMENT OF THE CASE AND FACTS

Amicus curiae adopts the statement of the case and facts set forth in Daniel Staffrey’s merit brief.

STATEMENT OF INTEREST OF AMICUS CURIAE, OFFICE OF THE OHIO PUBLIC DEFENDER

The Office of the Ohio Public Defender (OPD) is a state agency that represents indigent criminal defendants, coordinates criminal-defense efforts throughout Ohio, and contributes to the promulgation of Ohio law. The mission of the OPD is to protect and defend the rights of indigent persons by providing and supporting superior representation in the criminal and juvenile justice systems. The OPD has an interest in this case because it will determine the scope of judicial-release eligibility for incarcerated Ohioans.

INTRODUCTION

The aggregate prison population in Ohio consists of people with sentences imposed via two conceptually different schemes. The temporal divide for the two schemes is July 1, 1996. First, there are people with indeterminate sentences (e.g., 10-to-25 years) governed by full parole board control regarding early release (hereinafter “parole-scheme sentences”), and second—at least for what matters in this case—there are people with determinate sentences (e.g., 10 years) for which early release is administered solely through full judicial control (hereinafter “judicial-scheme sentences”).

This contrast creates the de novo question presented here: are individuals serving parole-scheme sentences eligible for judicial release under legislation enacted during the judicial-scheme-sentence regime as delineated in the current version of R.C. 2929.20? *See generally French v. Ascent Resources-Utica, L.L.C.*, 2022-Ohio-869, ¶ 11 (establishing statutory-

interpretation reviews as de novo); *see also Staffrey*, 2023-Ohio-4746, ¶ 12, 15, 18, 20-21 (7th Dist.).

At issue is the following language: “‘eligible offender’ means any person who, on or after April 7, 2009, is serving a stated prison term that includes one or more nonmandatory prison terms.” R.C. 2929.20(A)(1)(a); *see also Staffrey* at ¶ 12, 15, 18, 20-21. Based upon a “plain reading,” the court below concluded that those words establish judicial-release eligibility for those serving parole-scheme sentences. *Staffrey* at ¶ 21; *see also id.* at ¶ 18, 20, 22-23. In essence, the words mean exactly what they say. *See id.*

That approach is consistent with this court’s long-established precedent. First, the “question is not what did the [G]eneral [A]ssembly intend to enact, but what is the meaning of that which it did enact.” *French*, 2022-Ohio-869, at ¶ 12, quoting *Slingluff v. Weaver*, 66 Ohio St. 621 (1902), paragraph two of the syllabus. And second, an “unambiguous statute is to be applied, not interpreted.” *Id.* at ¶ 12, quoting *Sears v. Weimer*, 143 Ohio St. 312 (1944), paragraph five of the syllabus. The State simply disagrees with the General Assembly’s word choice. *See Staffrey* at ¶ 16-22.

ARGUMENT

Appellant State of Ohio’s First Proposition of Law: Offenders serving indefinite sentences under pre-Senate Bill 2 sentencing statutes are ineligible for judicial release under R.C. 2929.20.

Appellant State of Ohio’s Second Proposition of Law: Offenders serving indefinite sentences under pre-Senate Bill 2 sentencing statutes are not “eligible offenders” under R.C. 2929.20(A)(1)(a).

Two initial points: (1) the OPD generally defers to Mr. Staffrey’s substantive arguments but highlights two considerations as detailed below, and (2) because there appears to be little

consequential difference between the State’s two propositions, the OPD will offer the considerations generally as they apply equally to both propositions.

I. The current judicial-release-eligibility definition means what it says

Again, the court of appeals determined that the plain-language definition in the applicable judicial-release statute means what it says and “essentially carves judicial release out of the eligibility requirements of [unrelated sentencing considerations] by providing separate eligibility requirements.” *Staffrey*, 2023-Ohio-4746, at ¶ 18, 20-23. And, as explained above, that is the end of the inquiry under this court’s precedent. *See French*, 2022-Ohio-869, at ¶ 12.

II. If interpretation is needed, this court has already established what the legislature intended

Although not stating it explicitly—the word “ambiguous” does not appear in the State’s brief—the State essentially argues that there is ambiguity for two reasons: (1) generally, because parole-scheme sentences are entirely separate and wholly unrelated to judicial-scheme sentences, the two regimes have unilaterally different operations, and (2) the legislative phrase “stated prison term” applies only to judicial-scheme sentences. *See generally* State’s Brief, at 5-20.

As to the first assertion, the court below properly held that the plain language at issue makes that general conceptual difference irrelevant, as “any person” in prison “on or after April 7, 2009” cannot mean anything other than *any* person. *See Staffrey* at ¶ 18, 20-23; R.C. 2929.20(A)(1)(a).

For the second claim, admittedly, it is true that the General Assembly—in places—uses the legislative phrase “stated prison term” in exclusive reference to judicial-scheme sentences. *See, e.g.*, R.C. 2967.021, R.C. 2951.011, and R.C. 5120.021. Ultimately, however, Ohio’s Revised Code illuminates the folly of the State’s argument because it is equally true that the

legislature, in other places, uses that term in reference to both parole-scheme and judicial-scheme sentences. *See, e.g.*, R.C. 5120.63, R.C. 2967.01, and R.C. 5120.17.

For an example, take R.C. 5120.63, which empowers Ohio’s Department of Rehabilitation & Correction to randomly drug test inmates. There, only “stated prison term” is used. Of course, that usage includes both parole-scheme and judicial-scheme sentences for it defies logic that the General Assembly would endorse random drug testing for anything but *all* prisoners.

If these dichotomies create ambiguity, this court has already determined that the law from which they spawned was the legislature’s comprehensive effort “to reduce the state’s prison population and to save the associated costs of incarceration by diverting certain offenders from prison and by shortening the terms of other offenders sentenced to prison.” (Citations omitted.) *State v. Thomas*, 2016-Ohio-5567, ¶ 13. From those underpinnings, the only rational interpretation for the language here is that “any person” means *any* person. *See Staffrey*, 2023-Ohio-4746, at ¶ 18, 20-23.

CONCLUSION

For the reasons stated above, and those presented in Mr. Staffrey’s merit brief, the decision below must be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Merit Brief of Amicus Curiae Office of the Ohio Public Defender in Support of Appellee Daniel Staffrey was electronically delivered to the following parties on this 10th day of July, 2024:

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