

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellant, :
 : No. 111065
 v. :
 :
 TIMOTHY DARDEN, :
 :
 Defendant-Appellee. :

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: June 30, 2022

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-21-657453-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 Michael V. Wilhelm, Assistant Public Defender, *for appellee*.

MARY J. BOYLE, J.:

{¶ 1} Plaintiff-appellant, the state of Ohio (“state”), appeals the sentence imposed by the trial court on defendant-appellee, Timothy Darden (“Darden”). For

the reasons set forth below, we reverse Darden’s sentence and remand for a resentencing hearing in accordance with Reagan Tokes Act.

I. Facts and Procedural History

{¶ 2} In March 2021, Darden was charged with rape (Count 1), kidnapping (Count 2), and attempted rape (Count 3) for an incident that occurred in October 2020. The charges indicate that the victim’s date of birth is April 1, 2004.

{¶ 3} In October 2021, Darden entered into a plea agreement with the state in which Darden pled guilty to rape as charged in Count 1, with the remaining counts nolle. At the sentencing hearing, the court imposed a prison sentence of ten years and stated, “in regards to the [Reagan] Tokes Law, this court finds the indefinite sentencing to be unconstitutional pursuant to the 8th District Court of Appeals.”

{¶ 4} It is from this order that the state now appeals, as a matter of right, raising the following single assignment of error for review:

Assignment of Error: The trial court plainly erred when it found S.B. 201 to be unconstitutional and did not impose an indefinite sentence pursuant to S.B. 201.

II. Law and Analysis

{¶ 5} The state argues that it was error for the trial court not to impose the sentence in accordance with the Reagan Tokes Act, noting that the majority of this court found the Reagan Tokes Act constitutional in our recent en banc decision, *State v. Delvallie*, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.). Darden acknowledges that *Delvallie* “has settled the issue of Reagan Tokes constitutionality

for this district,” but out of an abundance of caution, challenges the constitutionality of the Act since the issue has not yet been resolved by the Ohio Supreme Court.

{¶ 6} We sustain the state’s sole assignment of error in light of our decision in *Delvallie*. See also *State v. Hardin-Rogers*, 8th Dist. Cuyahoga No. 109679, 2022-Ohio-802, ¶ 2 (where this court recently reversed defendant’s sentence and remanded the matter for a resentencing hearing when the trial court declined to apply Reagan Tokes Act to defendant’s sentence, finding the Act unconstitutional). Therefore, Darden’s sentence is reversed, and the matter is remanded for a resentencing hearing.

III. Conclusion

{¶ 7} Judgment is reversed, and the matter is remanded for a resentencing hearing.

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.

MARY J. BOYLE, JUDGE

EILEEN T. GALLAGHER, J., CONCURS

MARY EILEEN KILBANE, P.J., CONCURS IN JUDGMENT ONLY

N.B. Judge Eileen T. Gallagher joined the dissent by Judge Lisa B. Forbes in *Delvallie* and would have found that R.C. 2967.271(C) and (D) of the Reagan Tokes Law are unconstitutional.

Judge Mary Eileen Kilbane joined the dissenting opinion by Judge Lisa B. Forbes and the concurring in part and dissenting in part opinion by Judge Anita Laster Mays in *Delvallie* and would have found the Reagan Tokes Law unconstitutional.