

COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT,
CUYAHOGA COUNTY

State v. Riemer

2022 Ohio 1230 (Ohio Ct. App. 2022) · No. 110308 · Decided April 14, 2022

SUMMARY

The Ohio Court of Appeals, Eighth Appellate District, affirmed Hector Riemer’s indefinite sentence imposed under the Reagan Tokes Law. The court rejected his constitutional challenges to the law under its en banc precedent in State v. Delvallie and overruled his ineffective-assistance claim.

CASE DETAILS

COURT	Court of Appeals of Ohio, Eighth Appellate District, Cuyahoga County
WRITING FOR THE COURT	Frank Daniel Celebrezze, III, J.; Mary J. Boyle, P.J.; Lisa B. Forbes, J.
JURISDICTION	Ohio
DECIDED	April 14, 2022
DOCKET	110308
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct criminal appeal from an indefinite prison sentence imposed after appellant pleaded guilty to amended charges.
STANDARD OF REVIEW	The constitutional challenge was reviewed as a legal issue on direct appeal. Ineffective-assistance claims were analyzed under the Strickland deficiency-and-prejudice standard.
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	Hector Riemer v. State of Ohio

TOPICS

- sentencing
- constitutional law
- due process
- separation of powers
- ineffective assistance

PRACTICE AREAS

- criminal law
- constitutional law
- appellate practice

QUESTIONS PRESENTED

1. Whether the Reagan Tokes Law violates the United States and Ohio Constitutions by allegedly infringing the right to trial by jury, separation of powers, and due process.
2. Whether Riemer was denied effective assistance of counsel in connection with the constitutional challenge to the Reagan Tokes Law.

HOLDINGS

1. The constitutional challenges to the Reagan Tokes Law were rejected, consistent with the Eighth District's en banc decision in *State v. Delvallie*.
2. Riemer's constitutional challenge was properly preserved because both the trial court and defense counsel raised the constitutionality of the Reagan Tokes Law at sentencing.
3. Riemer was not denied effective assistance of counsel because his constitutional argument was properly preserved for appeal, and he therefore could not establish deficient performance or resulting prejudice on the asserted theory.

KEY QUOTATIONS

“In order to demonstrate ineffective assistance of counsel, appellant must show (1) deficiency in the performance of counsel “so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment” and (2) that the errors made by counsel were “so serious as to deprive the defendant of a fair trial[.]””

FACTUAL BACKGROUND

Riemer was charged in a three-count indictment arising from conduct supporting aggravated burglary, felonious assault, and carrying a concealed weapon charges. He entered guilty pleas to amended burglary and felonious-assault charges, with a one-year firearm specification, while the concealed-weapon count was nolle. The trial court imposed an indefinite sentence totaling four years to a maximum of five and one-half years and defense counsel objected to the constitutionality of the Reagan Tokes Law at sentencing.

PROCEDURAL HISTORY

Riemer was indicted for aggravated burglary, felonious assault, and carrying a concealed weapon. Pursuant to a plea agreement, he pleaded guilty to amended burglary and felonious-assault charges, including a one-year firearm specification; the remaining count was nolle. The Cuyahoga County Court of Common Pleas imposed an indefinite prison sentence under the Reagan Tokes Law, and Riemer appealed, challenging the statute's constitutionality and alleging ineffective assistance of counsel in the alternative.

DISPOSITION

affirmed

CASES CITED

- *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, ¶ 26

- State v. Henderson, 161 Ohio St.3d 285, 2020-Ohio-4784, 162 N.E.3d 776, ¶ 27
- State v. Maddox, Slip Opinion No. 2020-1266, 2022-Ohio-764, ¶ 21
- State v. Delvallie, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470
- Strickland v. Washington, 466 U.S. 668, 687, 694 (1984)

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