



OHIO

CRIMINAL SENTENCING COMMISSION

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TO: Ad Hoc Committee on the Uniform Sentencing Entry

FROM: Scott Shumaker, Criminal Justice Counsel

DATE: 10/07/20

RE: SB 201 Appellate Decisions

As a continuation of our efforts to inform and educate practitioners on the implementation of 132 GA Senate Bill 201 “The Reagan Tokes Law” (SB201), and consistent with our statutory duty to review and evaluate changes to Ohio’s sentencing structure, we have begun tracking appellate cases related to the provisions of SB201. Those cases are detailed below, and this document will continue to be updated as new decisions are rendered or cases are filed, and hosted on the Commission’s website under “SB201 Resources.”

Our tracking efforts are broken down into three sections. The first, labeled Appellate Decisions, are those cases in which an appellate court has rendered a decision addressing SB201 directly, either through challenges to the constitutionality of the law, or to address any alleged errors in sentencing process. The second section are the pending appellate challenges we have been able to find which have not yet been decided. Due to the lack of a centralized, statewide case management system able to be searched for these types of cases, we are reliant on self-reporting from the twelve appellate districts as to these pending cases. We have reached out to the appellate judges association to coordinate efforts on this front, as we’re sure there are more cases than currently listed. Finally, an endnotes section details appellate decisions that make mention of SB201 but do not address its provisions, broken down by district.

APPELLATE DECISIONS

Second District Court of Appealsⁱ

[**State v. Barnes, 2020-Ohio-4150, Decided August 21, 2020.**](#) Among other issues, the defendant challenged the constitutionality of their indefinite sentence under SB201 as unconstitutional violations of due process and separation of powers. The defendant failed to object to the constitutionality of SB201 at the time of sentencing, and as such waived the issue, but the court draws a distinction between the “bad time” statute ruled unconstitutional in *Bray* and the maximum term provisions of SB201.

[**State v. Ferguson, 2020-Ohio-4153, Decided August 21, 2020.**](#) Defendant challenged both the denial of a motion to suppress and the constitutionality of their SB201 indefinite sentence upon conviction as violation of separation of powers and of their constitutional right to due process. The Court upheld the constitutionality of SB201, likening its provisions to those of the post-release control statute and citing *Woods v. Telb*, 89 Ohio St.3d 504 (2000) and its progeny for the proposition that a sanction imposed by the court and later executed upon by the executive does not violate separation of powers. It also held that SB201 imposes sufficient limitations on ODRC’s discretion to impose time beyond the minimum term. The court directly addresses the holding in *State v. Oneal*, the Hamilton County Common Pleas decision which first held SB201 indefinite sentencing provisions to be unconstitutional.

[**State v. Leet, 2020-Ohio-4592, Decided September 25, 2020.**](#) Defendant appealed their indefinite sentence arguing that SB201 unconstitutionally violates the separation of powers doctrine and the right to due process. The Court

distinguished SB201 sentences from the “bad time” provisions stricken down by *State ex rel. Bray v. Russell* 89 Ohio St.3d 132 (2000) holding that extension of incarceration beyond the minimum term is merely executive execution of a judicially imposed maximum term. The Court cited its holding in *State v. Ferguson* above and held that SB201 does not violate the right to due process.

Fourth District Court of Appeals

[*State v. Conant, 2020-Ohio-4319, Decided August 27, 2020.*](#) Defendant challenged the constitutionality of SB201 as part of his appeal. However, as the defense did not raise the issue at the time of sentencing, the Court held that the defense forfeited all but plain error review on appeal, and no plain error argument was included in the appeal.

Fifth District Court of Appealsⁱⁱ

[*State v. Shelton, 2020-Ohio-1218, Decided March 27, 2020.*](#) The defendant was not sentenced to a minimum or maximum term in compliance with SB201 for a qualifying F1 Failure to Provide Notice of Change of address. The State conceded error on that issue. Appellate decision goes on to hold that the defendant’s juvenile adjudication for rape could be used as a basis for the sex offender registration requirements of R.C. 2950.

[*State v. Manion, 2020-Ohio-4230, Decided August 25, 2020.*](#) The defendant challenged the constitutionality of SB201’s indefinite sentencing provisions as violative of their rights to trial by jury and due process, and of the separation of powers doctrine. The Court held that the constitutionality argument was not yet ripe for review, as the defendant had not yet been subject to continued incarceration. Citing the challenges to Ohio’s “bad time” provisions in *State ex rel. Bray v. Russel* 89 Ohio St.3d 132 (2000), the Court held that the proper method the constitutionality of SB201’s maximum sentence provisions would be via a habeus writ after incarceration had been extended.

[*State v. Downard, 2020-Ohio-4227, Decided August 26, 2020.*](#) The defendant challenged the constitutionality of SB201’s indefinite sentencing provisions as violative of due process and separation of powers, and also argued defense counsel was ineffective for failing to raise the constitutionality issue at trial. The Court held that the constitutionality argument was not yet ripe for review, as the defendant had not yet been subject to continued incarceration. Citing the challenges to Ohio’s “bad time” provisions in *State ex rel. Bray v. Russel* 89 Ohio St.3d 132 (2000), the Court held that the proper method the constitutionality of SB201’s maximum sentence provisions would be via a habeus writ after incarceration had been extended. The ineffective assistance of Counsel claim was not addressed.

[*State v. Kibler, 2020-Ohio-4631, Decided September 25, 2020.*](#) The defendant challenged the constitutionality of SB201’s indefinite sentencing provisions as violative of due process, and argued ineffective assistance of counsel for failure to raise the issue in the trial court. Citing their decision in Downard above, the Court held that the constitutionality argument was not yet ripe for review, as the defendant had not yet been subject to continued incarceration. The ineffective assistance of counsel claim was not addressed.

Sixth District Court of Appealsⁱⁱⁱ

[*State v. Maddox, 2020-Ohio-4702, Decided September 30, 2020*](#)¹. Defendant appealed after an *Alford* plea and subsequent imposition of an indefinite sentence on the basis of both plain error arguing that SB201 sentences are unconstitutional, and ineffective assistance for defense counsel’s failure to object to the SB201 sentence at the time of sentencing. The Court held that the constitutionality argument was not yet ripe for review, as the defendant had not yet been subject to continued incarceration. Citing the challenges to Ohio’s “bad time” provisions in *State ex rel. Bray v. Russel* 89 Ohio St.3d 132 (2000), the Court held that the proper method the constitutionality of SB201’s maximum

¹ Due to a conflict, *Maddox* was decided by a panel of three Fifth District Court of Appeals judges. No members of the Sixth District took part in the case.

sentence provisions would be via a habeus writ after incarceration had been extended. The ineffective assistance of Counsel claim was not addressed.

[**State v. Veliquette, 2020-Ohio-4855, Decided October 9, 2020.**](#) Defendant appealed denial of motion to suppress and their indefinite prison sentence under SB201, arguing that the sentencing scheme unconstitutionally violates the separations of powers doctrine and their right to due process. The Court cited its decision in *Maddox* above holding that the issue is not yet ripe for review, however, it also recognized that the Second and Twelfth Appellate Districts have both issued opinions finding the issue ripe and upholding the constitutionality of the law. Based on this conflict among the districts, the Court certified the question to the Supreme Court for further review.

Eighth District Court of Appeals^{iv}

[**State v. Young, 2020-Ohio-4135, Decided August 20, 2020.**](#) The defendant was found not guilty by reason of insanity for a first-degree felony, and committed for a term of up to 11 years pursuant to statute. The Appellate Court held that the “maximum term of imprisonment” for these purposes was actually 11-16.5 years pursuant to SB 201 and RC 2929.144, and remanded the case for resentencing. The Court further held that the defendant’s failure to raise the issue of the constitutionality of SB201 at the trial level forfeited the issue on appeal, and as such the Court made no holding on that issue.

Ninth District Court of Appeals^v

Eleventh District Court of Appeals^{vi}

Twelfth District Court of Appeals^{vii}

[**State v. Guyton, 2020-Ohio-3837, Decided July 27, 2020.**](#) Defendant was convicted and sentenced to and indefinite 9 to 13.5-years in prison on a qualifying felony of the first degree, run concurrently to two other prison terms. Defense counsel made a general objection to the constitutionality of SB201 at the time of sentencing. Defendant’s appeal argued that the imposition of additional prison time beyond the minimum term was violative of due process at it was being imposed by the executive branch rather than a court. The Twelfth District likened the provisions of rebutting the presumption of release to those made by a parole board, noting that the statute provides the defendant with notice of the rebuttal hearing and an opportunity to be heard in the same manner as a parole-eligible inmate, and overruled the appeal.

[**State v. Alexander, 2020-Ohio-3838, Decided July 27, 2020.**](#) Defendant appealed constitutionality of SB201, but failed to raise the issues before or after trial or object at the time of sentencing. The Court held that the defendant forfeited the right to challenge the constitutionality of SB201 by failing to raise the issues at trial.

[**State v. Rogers, 2020-Ohio-4102, Decided August 17, 2020.**](#) Defendant appealed their sentence arguing a failure to comply with Criminal Rule 11 during the plea colloquy, and challenging the constitutionality of their SB201 indefinite sentence. The Court found fault with the plea colloquy and remanded the case on that basis, mooting the SB201 issue in the process. Judge Piper’s dissent cites the decision in *Guyton* above for the holding that SB201’s indefinite sentencing scheme is constitutional.

[**State v. Morris, 2020-Ohio-4103, Decided August 17, 2020.**](#) Defendant appealed constitutionality of their indefinite sentence imposed under SB201. The Court cites the decision in *Guyton* above for the holding that SB201’s indefinite sentencing scheme is constitutional.

[**State v. Teasley, 2020-Ohio-4626, Decided September 28, 2020.**](#) Defendant appealed constitutionality of their indefinite sentence imposed under SB201 as violative of due process and separation of powers. The Court cited *Alexander* above

as well as *State v. Young*, 2020-Ohio-4135 (8th Dist.) and held that the defendant forfeited the right to challenge the constitutionality of SB201 by failing to raise the issues at trial.

PENDING APPEALS

First District

<https://www.courtclerk.org/records-search/>

State v. Oneal, C 1900736 Filed 12/17/19. Appeal of trial court finding SB201 maximum terms unconstitutional.

Second District

Third District

Fourth District

Fifth District

Sixth District

Seventh District

Eighth District

<https://cpdocket.cp.cuyahogacounty.us/Search.aspx>

State v. Dames, C 109090 Filed 10/08/19. Challenge to constitutionality of SB201 as violative of right to trial by jury, separation of powers, and due process.

State v. Hollis, C 109092 Filed 10/08/19. Challenge to imposition of consecutive sentences and of SB201 constitutionality as violative of separation of powers and the rights to due process and a trial by jury.

State v. Kent, C 109118 Filed 10/17/19. Appeal based on denial of motion to suppress, manifest weight/sufficiency of evidence, ineffective assistance of counsel at trial, and to constitutionality of SB 201 indefinite sentencing scheme as violative of separation of powers and right to due process.

State v. Doss, C 109235 Filed 11/26/19. Challenge to voluntariness of plea alleging that court failed to inform the defendant of mandatory sentence. Reference to SB201 seems erroneous – defendant was only sentenced on F3 offenses.

State v. Peterson, C 109306 Filed 12/16/19. Several challenges to sentence including merger and failure to comply with statutory timeframes, as well as to a mathematical error in calculating the sentence, and a constitutional challenge to SB 201 indefinite sentencing scheme as violative of separation of powers, due process, and vagueness doctrine.

State v. Delvallie, C 109315 Filed 12/19/19. Constitutional challenge of SB 201 indefinite sentencing scheme as a denial of right to trial by jury for conduct which leads to extension of prison term beyond the minimum, as violative of separation of powers, and for violating right to due process.

State v. Stone, C 109322 Filed 12/23/19. Challenge to voluntariness of plea alleging that court failed to inform the defendant of mandatory sentence on one F3 and motion to suppress issues. Appellant does not challenge SB201 sentence or the constitutionality of the statute.

State v. Jenkins, C 109323 Filed 12/23/19. Challenge to constitutionality of SB201 as violative of right to trial by jury, separation of powers, and due process, as well as manifest weight challenge to convictions.

State v. Claggett, C 109324 Filed 12/23/19. Challenge to constitutionality of SB201 as violative of right to trial by jury, separation of powers, and due process.

State v. Winkler, C 109420 Filed 01/22/20. Challenge to constitutionality of SB201 as violative of right to trial by jury, separation of powers, and due process.

State v. Simmons, C 109476 Filed 02/07/20. State of Ohio's appeal of the trial court finding SB201 to be unconstitutional, adopting the Hamilton County trial court's opinion in *Oneal*.

State v. Parker, C 109494 Filed 02/12/20. Constitutional challenge of SB 201 indefinite sentencing scheme. Defendant argues that the statute fails to protect due process as the standard to extend a prison term beyond the minimum is overly vague. Defendant also argues the statute is violative of the separation of powers doctrine.

State v. Wilburn, C 109507 Filed 02/17/20. Constitutional challenge of SB 201 indefinite sentencing scheme as violative of separation of powers doctrine. Cites to *Oneal* decision from Hamilton County and *Tupper* decision from Cuyahoga County, both finding SB 201 unconstitutional.

State v. Daniel, C 109583 Filed 03/09/20. Constitutional challenge to SB 201 indefinite sentencing scheme as violative of right to trial by jury, separation of powers, and right to due process.

State v. Gamble, C 109613 Filed 03/18/20. Constitutional challenge of SB 201 indefinite sentencing scheme as a denial of right to trial by jury for conduct which leads to extension of prison term beyond the minimum, as violative of separation of powers for placing fact finding outside a judicial proceeding, and as violative of due process for vagueness.

State v. Sealey, C 109670 Filed 04/07/20. State appeals a trial court finding that SB 201 indefinite sentencing scheme is unconstitutional, arguing that it neither violates the separation of powers doctrine nor right to due process.

Ninth District

Tenth District

Eleventh District

<http://www.11thcourt.co.trumbull.oh.us/>

Twelfth District

ENDNOTES: APPELLATE DECISIONS REFERENCING SB201

ⁱ Second District Decisions Referencing SB201

State v. Shields, 2020-Ohio-3204, Decided June 5, 2020. Refers to SB201 indefinite sentencing but issues are unrelated to indefinite sentencing. The appeal was based on a defense argument that a prison sentence was not mandatory on an aggravated robbery charge with an attendant firearm specification.

State v. Dapice, 2020-Ohio-4324, Decided September 4, 2020. Appeal of indefinite sentence under SB201 rejected as result of it being jointly recommended by the parties and accepted by the trial court. Ineffective assistance claims also rejected. The state and defense were initially incorrect in calculating the maximum term of incarceration under SB201, were advised of the error by the court and agreed to the corrected joint recommendation at the time of the plea.

ⁱⁱ Fifth District Decisions Referencing SB201

State v. Grove, 2019-Ohio-1627, Decided April 29, 2019. Refers to SB201 indefinite sentencing only tangentially. The facts of the case occurred prior to effective date of amendment, and the defendant was given a definite sentence.

ⁱⁱⁱ Sixth District Decisions Referencing SB201

State v. Polley, 2020-Ohio-3213, Decided June 5, 2020. Defendant appealed their indefinite 10 to 15-year sentence for attempted murder and felonious assault as “contrary to law” under RC 2953.08(G)(2). No issues were presented related to the SB201 sentence, appellate court found that the record supported the sentence.

^{iv} Eighth District Decisions Referencing SB201

^v Ninth District Decisions Referencing SB201

State v. Moore, 2019-Ohio-1872, Decided May 15, 2019. Refers to SB201 indefinite sentencing only tangentially. Manifest weight of the evidence appeal for a case that occurred prior to SB201 effective date.

State v. Finklea, 2019-Ohio-2199, Decided June 5, 2019. Refers to SB201 indefinite sentencing only tangentially. Case dealt with evidentiary issues and review of imposition of a maximum sentence within range, facts occurred prior to the effective date of SB201.

State v. Sharier, 2019-Ohio-3533, Decided September 3, 2019. Refers to SB201 indefinite sentencing only tangentially. Case dealt with evidentiary issues and review of imposition of a maximum sentence within range, facts occurred prior to the effective date of SB201.

State v. Roberts, 2019-Ohio-4393, Decided October 28, 2019. Refers to SB201 indefinite sentencing only tangentially. Case dealt with Criminal Rule 11 plea hearing and review of sentence imposed, facts occurred prior to the effective date of SB201.

State v. Sprouse, 2020-Ohio-91, Decided January 15, 2020. Refers to SB201 indefinite sentencing only tangentially. Case dealt with manifest weight issues, facts occurred prior to the effective date of SB201.

State v. Brundage, 2020-Ohio-653, Decided February 26, 2020. Refers to SB201 indefinite sentencing only tangentially. Case dealt with denial of motion to withdraw guilty plea and review of sentence imposed, facts occurred prior to the effective date of SB201.

State v. Atkinson, 2020-Ohio-3522, Decided June 30, 2020. Refers to SB201 indefinite sentencing only tangentially. Case dealt with 4th Amendment issues and elements of the offense, facts occurred prior to the effective date of SB201.

vi [Eleventh District Decisions Referencing SB201](#)

vii [Twelfth District Decisions Referencing SB201](#)

State v. Hubbard, 2020-Ohio-856, Decided March 9, 2020. Refers to SB201 indefinite sentencing only tangentially. Challenge to the constitutionality and retroactive application of SB231 Violent Offender Database enrollment duties.