IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-210210 TRIAL NO. B-1802435-A
Plaintiff-Appellee,	:	
vs.	:	*O P I N I O N.*
	:	
TERSAIL CHAPMAN,		
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: November 5, 2021

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Paula E. Adams,* Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Derek W. Gustafson, for Defendant-Appellant.

BERGERON, Presiding Judge.

{¶1} Defendant-appellant Tersail Chapman pled guilty to various drug crimes consistent with a plea agreement that recommended a 36 month aggregate sentence. At nearly the midpoint of his sentence, Mr. Chapman filed a motion for judicial release, which the trial court denied. In this delayed appeal, Mr. Chapman does not contest either the voluntariness of his pleas or the validity of his sentence, but maintains that the trial court abused its discretion by accepting a plea agreement that denied his eligibility for judicial release. We disagree, concluding that his theory constitutes an improper attempt to obtain backdoor review of a nonappealable order denying judicial release. We accordingly affirm the trial court's judgment.

{¶2} In April 2018, Cincinnati police executed a search warrant on Mr. Chapman's residence. The search uncovered drug evidence, which led to his indictment for six counts of drug crimes.

{¶3} As the case unfolded, Mr. Chapman eventually entered a plea agreement with the state, agreeing to plead guilty to two counts of drug trafficking in exchange for the dismissal of the remaining charges. The plea agreement included a 36 month recommended aggregate sentence. And Mr. Chapman acknowledged that he was not eligible for judicial release, intensive prison programs, transitional control, or any other early release in the plea agreement. The trial court accepted the plea agreement, and it sentenced Mr. Chapman in accordance with the sentencing recommendation.

{¶4} Then in January 2021, Mr. Chapman filed a pro se motion for judicial release. The trial court denied the motion with a cursory one-page entry. Frustrated by that outcome, Mr. Chapman then sought leave for a delayed appeal, which this court granted. On appeal, Mr. Chapman raises one assignment of error, alleging that the trial court abused its discretion by denying him eligibility for judicial release as part of the guilty pleas.

{¶5} R.C. 2929.20 delineates the process and procedures for seeking judicial release, but significantly the legislature declined to provide any pathway for appellate review of the denial of that relief. As a result, Ohio courts generally recognize that the statute precludes appellate review of the denial of a motion for judicial release. *State v. Schlosser*, 2d Dist. Montgomery No. 26888, 2016-Ohio-731, ¶ 4 ("This court and others have also held that *Coffman* requires the dismissal of orders denying judicial release pursuant to R.C. 2929.20."), citing *State v. Coffman,* 91 Ohio St.3d 125, 742 N.E.2d 644 (2001); *State v. Cunningham*, 8th Dist. Cuyahoga No. 85342, 2005-Ohio-3840, ¶ 6 ("Ohio case law holds that a denial of a motion for judicial release is not a final appealable order."), *aff'd*, 113 Ohio St.3d 108, 2007-Ohio-1245, 863 N.E.2d 120; *State v. Waller*, 11th Dist. Trumbull No. 97-T-0082, 1997 WL 703353, *3 (Oct. 31, 1997) ("[W]e are without jurisdiction to review the trial court's denial of * * * [a] motion for judicial release."); *State v. Lawson*, 10th Dist. Franklin No. 02AP-148, 2002-Ohio-3329, ¶ 23 ("Like the statute providing for shock probation, R.C. 2929.20—the statute authorizing judicial release—confers substantial discretion to the trial court, but makes no provision for appellate review. Therefore, we join the Second, Ninth and Twelfth Districts in holding that a motion denying judicial release is not a final appealable order."). Mr. Chapman does not quibble with this general rule, but instead posits a novel theory that a trial court abuses its discretion by adopting a sentencing recommendation that denies eligibility for judicial release without considering the unique circumstances of the case. He insists that he remains eligible for judicial release and asks this court to order the trial court to reconsider his motion without placing any weight in the sentencing recommendation. At the same time, he does not challenge his pleas or sentence (and goes out of his way to clarify that in his brief).

{¶6} We have found no authority that supports Mr. Chapman's theory (nor has he pointed us to any). He initially features our recent decision in *State v. Elliott*, 2021-Ohio-

424, 168 N.E.3d 33 (1st Dist.). There we drew a distinction between agreed and recommended sentences, and sketched out relevant due process considerations that apply in certain circumstances. *Id.* at ¶ 15-19. But Mr. Chapman misconstrues *Elliot* as suggesting that accepting a sentencing recommendation that denies eligibility for judicial release constitutes an abuse of discretion. *Elliot* is, therefore, inapposite.

{¶7} Mr. Chapman cites several cases from our sister districts, none of which lend support to his proposition. *See, e.g.*, *State v. Fitzgerald*, 188 Ohio App.3d 701, 2010-Ohio-3721, 936 N.E.2d 585, ¶ 11 (8th Dist.) (blanket policy of rejecting plea agreements once trial date had been set constituted an abuse of discretion); *State v. Raymond*, 10th Dist. Franklin No. 05AP-1043, 2006-Ohio-3259, ¶ 11 (blanket policy of rejecting "pleas from people that don't think they did anything wrong" constituted an abuse of discretion); *State v. Carter*, 124 Ohio App.3d 423, 428, 706 N.E.2d 409 (2d Dist.1997) (blanket policy of rejecting no-contest pleas constituted an abuse of discretion). While these cases establish that rejecting a guilty plea in certain circumstances may constitute an abuse of discretion, they do not establish that accepting a guilty plea that denies eligibility for judicial release constitutes an abuse of discretion.

{¶8} Recognizing Mr. Chapman's theory would create a route to obtain appellate review of a motion for judicial release. We are not inclined to recognize such a legal theory that would contravene the legislature's wishes. *Waller*, 11th Dist. Trumbull No. 97-T-0082, 1997 WL 703353, at *3 ("[W]e are without jurisdiction to review the trial court's denial of * * * [a] motion for judicial release."). Accordingly, we overrule Mr. Chapman's sole assignment of error.

* * *

{¶9} We overrule Mr. Chapman's sole assignment of error and affirm the judgment of the trial court. To the extent that Mr. Chapman seeks review of the denial of judicial relief, we lack jurisdiction to consider that argument.

Judgment affirmed.

CROUSE and **WINKLER, JJ.,** concur.

Please note:

The court has recorded its entry on the date of the release of this opinion