

CASE DECISION LIST

December 27, 2018

105833 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
KIARA E. TORRES, ET AL. v CONCRETE DESIGNS INC., ET AL.

106493 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
KIARA E. TORRES v CONCRETE DESIGNS INC., ET AL.

Affirmed.

Frank D. Celebrezze, Jr., J., and Anita Laster Mays, J., concur; Sean C. Gallagher, P.J., concurs in judgment only in part and dissents in part with separate opinion.

KEY WORDS: *Civ.R. 59(A); motion for new trial; noneconomic damages; passion and prejudice; counsel remarks; misconduct by the prevailing parties; R.C. 2315.19; economic damages; judgment notwithstanding the verdict; permanent and substantial physical deformity; stipulations.*

The trial court did not abuse its discretion in denying appellants' motion for a new trial. Likewise, the trial court did not err in denying appellants' post-judgment motion pursuant to R.C. 2315.19. The awards of damages were not excessive given the severity of the injuries to Torres and Rojas. Moreover, there existed sufficient evidence for the jury to determine that Torres's injuries amounted to a "permanent and substantial physical deformity," the parties clearly stipulated that Torres's injuries amounted to a "permanent and substantial physical deformity," and Torres's and Rojas's damages awards were not capped at \$350,000.

106516 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEON J. BULGER

Affirmed.

Eileen A. Gallagher, A.J., Melody J. Stewart, J., and Mary J. Boyle, J., concur.

KEY WORDS: *In-court identification; unduly suggestive; manner of death testimony; sufficiency.*

Appellant's convictions were supported by sufficient evidence. Photo arrays were not unduly suggestive as police were not required to surround the defendant's photo with the photos of nearly identical people, in this case, individuals with matching neck tattoos. It was within the expertise of the coroner to give an opinion on whether a death is a homicide.

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106784 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RAMONE GAINES

Affirmed in part, vacated in part, and remanded.

Frank D. Celebrezze, Jr., J., Eileen A. Gallagher, A.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Community control sanctions; violation; probable cause; revocation; due process; plain error; Crim.R. 52; misdemeanor sentence; R.C. 2929.21; R.C. 2929.22; consecutive sentences; R.C. 2929.14(C)(4).*

The trial court's revocation of appellant's community control sanctions did not violate appellant's due process rights. The trial court did not abuse its discretion in imposing six-month sentences on appellant's first-degree misdemeanor convictions. The trial court failed to make the requisite consecutive sentence findings pursuant to R.C. 2929.14(C)(4) during the sentencing hearing.

106802 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v NABIL NAJAR

Affirmed.

Frank D. Celebrezze, Jr., J., Sean C. Gallagher, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Rape; kidnapping; ineffective assistance of counsel; sufficiency; manifest weight; motion for a new trial; contrary to law; plain error; Crim.R. 52; fair trial; Evid.R. 606; aliunde rule; R.C. 2953.08; R.C. 2929.11; R.C. 2929.12; R.C. 2929.14.*

Appellant was not denied his constitutional right to the effective assistance of counsel. The trial court's remarks during opening statements were not prejudicial nor deprived appellant of his constitutional right to a fair trial. Appellant's convictions were supported by sufficient evidence and not against the manifest weight of the evidence. The trial court did not abuse its discretion in denying appellant's motion for a new trial. The trial court's 11-year prison sentence is not contrary to law.

106861 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
WILLIAM MANGANO v 1033 WATER STREET, LLC, ET AL.

Affirmed.

Mary J. Boyle, P.J., Larry A. Jones, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Ohio Condominium Act; R.C. Chapter 5311; R.C.*

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5311.08; R.C. 5311.25; permanent injunction; irreparable harm; entitled to relief; unit owner; developer control; unit owner's association; declaration; bylaws; voting rights; real party in interest; Civ.R. 17(A).

The trial court properly granted a permanent injunction to a condominium unit owner because the owner established that (1) he was entitled to relief under the statute, (2) he would be irreparably harmed if the injunction was not granted, and (3) there was no adequate remedy at law. Under R.C. 5311.08(D), a developer of a condominium complex must relinquish control of the unit owners' association when either 75 percent of the condominium property is sold or three years have passed from the date the association is established, whichever comes first. Under Civ.R. 17(A), the trial court did not err when it permitted the plaintiff to substitute himself when he was the trustee of the trust.

106868 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CARLTON R. LOGAN

Affirmed.

Larry A. Jones, Sr., J., Eileen A. Gallagher, A.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Motion for DNA analysis; motion for relief from judgment; invited error doctrine; ineffective assistance of counsel.*

Appellant's agreement to withdraw his request for DNA analysis in exchange for being labeled the lowest category of sexual offender classification falls under the invited error doctrine. Appellant cannot benefit from this error.

Appellant failed to appeal the trial court's denial of appellant's motion for relief from judgment and that issue therefore is not properly before this court.

Appellant was present at the hearing where, through strategy, appellant's counsel withdrew appellant's request for DNA analysis for a bargained-down lesser classification of sexual offender. Appellant was present and stated no opposition to the agreement. Appellant's counsel's performance did not fall below a reasonable level of representation.

106881 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RALPH SPENCER

Affirmed.

Eileen T. Gallagher, J., and Tim McCormack, P.J. concur; Mary J. Boyle, J., concurs in judgment only with separate opinion.

KEY WORDS: *Suppress; evidence; traffic stop; inventory search; administrative; investigatory; intent; vehicle; standardized procedure; dismiss; evidence; exculpatory; good faith; potentially useful; burden.*

The state satisfied its burden of showing that the search of the defendant's vehicle fit within the well-defined inventory search exception to the warrant requirement of the Fourth Amendment. Defendant failed to satisfy his burden to establish that missing evidence was materially exculpatory. The dash-cam video was only potentially useful, and there is no evidence to suggest the evidence was destroyed in bad faith.

106899 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MARIO WILEY

Affirmed and remanded.

Larry A. Jones, Sr., J., Patricia Ann Blackmon, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Crim.R. 11 (C)(3)/guilty plea; R.C. 2941.25/allied offenses; ineffective assistance of counsel.*

Appellant, although determined to have mental issues, participated in the plea hearing process; gave responsive answers and gave no indication of confusion or an inability to understand. Appellant's guilty plea was made knowingly, intelligently and voluntarily.

Where the record demonstrates a facial issue of allied offenses, the trial court failed to conduct a merger analysis.

Appellant's counsel was not ineffective for not having appellant evaluated prior to appellant's pleas, however, appellant's counsel was ineffective where he failed to raise the issue of merger at the sentencing hearing.

106902 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TIMOTHY D. TERRELL

Affirmed.

Mary J. Boyle, P.J., Larry A. Jones, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Ineffective assistance of counsel, disproportionate sentence, R.C. 2929.11, R.C. 2929.12.*

The defendant failed to show that he was prejudiced by his trial counsel's failure to supplement the record with sentences of similarly situated offenders for sentencing purposes.

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106912 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DONZELL WARD

107160 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DONZELL WARD

Affirmed.

Mary J. Boyle, P.J., Larry A. Jones, Sr., J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Crim.R. 11(C), guilty plea, conflicting information, judicial fact-finding, R.C. 2929.11, R.C. 2929.12, ineffective assistance of counsel, sexual predator classification, Megan's Law.*

The trial court did not provide the defendant conflicting information before he pleaded guilty. The trial court did not engage in improper judicial fact-finding when it commented on the victim's injuries before sentencing because the trial court was allowed to consider that information under R.C. 2929.11 and 2929.12 and the information concerning the victim's injuries was contained in the presentence investigation report. The defendant waived his arguments for ineffective assistance of counsel because he pleaded guilty, and none of those arguments challenged the voluntariness of his guilty plea. Finally, the trial court's decision to classify the defendant as a sexual predator was supported by competent, credible evidence and was not against the manifest weight of the evidence.

106947 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TARRIS PRIEST

Vacated and remanded.

Mary Eileen Kilbane, P.J., Sean C. Gallagher, J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *Merger; abduction; domestic violence; allied offenses of similar import; fail to object; plain error; defense counsel ineffective; consecutive sentence; maximum sentence.*

Judgment vacated and remanded. The record fails to demonstrate, with a reasonable probability, that the abduction and domestic violence counts are not allied offenses when defendant punched the victim while they were standing and then, moments later, chokes the victim while she was on the couch. Because there were not two separate resulting harms that the victim experienced, the offenses are not allied offenses. The act of domestic violence encompassed the punching and the choking. Therefore, the trial court should have merged the offenses for purposes of sentencing.

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106953 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MARCUS E. RICE

Affirmed.

Larry A. Jones, Sr., J., Eileen A. Gallagher, A.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Crim.R. 11(B)(1)/guilty plea; manifest weight; Evid.R. 404(B)/other acts.*

Appellant, midtrial, voluntarily entered a plea of guilty thereby waiving all errors he could have claimed had he continued with the trial and been convicted. Appellant's manifest weight argument is moot in this appeal.

The trial court's introduction of appellant's prior acts, previous indictment and negative institutional record was done to show appellant's familiarity with the criminal justice system and that appellant's plea was given knowingly, intelligently, and voluntarily. The trial court did not err where it denied appellant's motion to withdraw appellant's guilty plea.

106995 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CARL FOUNTAIN

Affirmed.

Eileen A. Gallagher, A.J., Larry A. Jones, Sr., J., and Kathleen Ann Keough, J., concur,

KEY WORDS: *Motion to vacate court costs.*

Trial court did not err in denying appellant's motion to vacate court costs and fines based on the argument that the court had failed to orally advise him of his obligation to pay costs at his sentencing hearing before imposing them in his sentencing entry. The trial court retains jurisdiction to waive, suspend, or modify the payment of the costs at the time of sentencing or any time thereafter.

107050 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v B. J.

Affirmed.

Mary Eileen Kilbane, P.J., Sean C. Gallagher, J., and Larry A. Jones, Sr., J., concurs.

KEY WORDS: *Motion for expungement; sealing record; assault of a peace officer; R.C. 2903.13; R.C. 2953.36.*

Judgment affirmed. Appellant is not eligible for expungement and the trial court did not err when it found that he cannot have his

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record sealed under R.C. 2953.36, because the assault of a police officer is a fourth-degree felony and the specific exceptions found in R.C. 2953.36(C) to the general rule precluding expungement of offenses of violence do not apply.

107179 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v PEREZ WORLEY

Dismissed.

Frank D. Celebrezze, Jr., J., Eileen T. Gallagher, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: Final appealable order; R.C. 2505.02(A); resentencing hearing; res judicata.

Appellant appealed from the trial court's resentencing entry which corrected a previous error and imposed postrelease control. Thus, the scope in the instant appeal was limited to appellant's challenges to the trial court's resentencing entry as it pertained to postrelease control. Any other challenges are barred by res judicata.

107201 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: J.H., JR.

Affirmed.

Larry A. Jones, Sr., J., Mary Eileen Kilbane, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: Manifest weight; delinquent adjudication.

The trial court did not err in finding appellant delinquent. Sufficient evidence and witness testimony was presented to prove the essential elements of aggravated robbery, kidnapping and grand theft.

107252 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOSEPH DEMETER

Dismissed.

Eileen A. Gallagher, A.J., Kathleen Ann Keough, J., and Anita Laster Mays, J., concur.

KEY WORDS: Anders Brief, motion to withdraw.

Appellate counsel's motion to withdraw filed in compliance with Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), was granted and the appeal dismissed after a thorough

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review of the record failed to reveal any meritorious arguments for appeal. Appellant's plea was not invalid despite the fact that he suffered from bipolar disorder and had not received his medication in jail because the record reflected no concerns that his condition affected his ability to enter a knowing and intelligent plea. The trial court satisfied its burden to consider appellant's ability to pay restitution by asking appellant if he understood that full restitution to the victim of his grant theft charge was part of his sentence.