

July 5, 2018

**105159** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MITCHELL HARTMAN

Reversed and remanded.

Melody J. Stewart, J., writing for the majority in part, and concurs in part and dissents in part with separate opinion attached; Patricia Ann Blackmon, J., writing for the majority in part, and dissents in part and concurs in part with separate opinion attached; Mary Eileen Kilbane, P.J., concurs with the majority opinions.

**KEY WORDS:** *Fellatio; sexual conduct; sleeping; Evid.R. 404(B); other acts evidence; flight instruction.*

*Evidence sufficient to sustain count of forcible rape and substantially impaired rape when victim testified that she thought the person with whom she engaged in sexual conduct while asleep was her boyfriend before discovering that the person was, in fact, the defendant.*

*Court abused its discretion by allowing other acts testimony because it was irrelevant, prejudicial, and used to show the defendant's character and that he acted in conformity therewith. Court's instruction on other acts testimony compounded the error.*

*Court abused its discretion by giving flight instruction when state's request plainly showed that the defendant left the scene because the victim demanded that he leave, not for the purpose of eluding apprehension by the police.*

**105434** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DAJHON WALKER

Affirmed in part; reversed in part and remanded.

Larry A. Jones, Sr., J., Melody J. Stewart, P.J., concurs in judgment only; Patricia Ann Blackmon, J., dissents with separate opinion.

**KEY WORDS:** *Jurisdiction; resentencing; double jeopardy; res judicata.*

*The trial court had jurisdiction to resentence appellant. After the trial court vacated appellant's original sentence, he was placed back in the same position as if he had never been sentenced at all.*

*Appellant's argument that the trial court erred in imposing consecutive sentences is barred by the doctrine of res judicata. Appellant failed to appeal the consecutive sentences on direct appeal.*

## CASE DECISION LIST

**105735** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MICHEAL A. BELL

Affirmed.

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

**KEY WORDS:** *R.C. Chapter 2950/sex offender/Adam Walsh Act.*

**Appellant's application of In Re C.P., 131 Ohio St.3d 513 is misplaced. As an adult, the trial court did not err in determining appellant to be a Tier II sex offender.**

**105845** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: A.W.

Affirmed.

Eileen T. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur; Kathleen Ann Keough, J., dissents with separate opinion.

**KEY WORDS:** *Serious youth offender; blended sentence; sex offender treatment; due process; juvenile court jurisdiction; Ohio Department of Youth Services ("ODYS"); R.C. 5139.04; notice; fair warning; invocation; adult portion; misconduct; clear and convincing evidence; self-incrimination; Fifth Amendment; Miranda; "classic penalty situation"; self-executing.*

**Youth's due process rights were not violated even though trial court did not order sex offender treatment at dispositional hearing and invoked the adult portion of SYO sentence for failure to complete sex offender treatment because (1) the Ohio Department of Youth Services ("ODYS") had authority to order the treatment and ordered the treatment when the youth entered ODYS custody; (2) the youth was on notice that failure to comply with ODYS programs would result in invocation of his adult sentence; (3) there was no requirement that he complete the program as long as he made sufficient progress to warrant release into the community.**

**Failure to comply with required sex offender treatment constitutes misconduct under the SYO statute and may justify invocation of the adult portion of an SYO sentence.**

**Fifth Amendment privilege against self-incrimination prohibited the trial court from considering incriminating statements youth made to his therapists during sex offender treatment, but there was sufficient evidence without use of the statements to support the court's judgment invoking the adult portion of the SYO sentence.**

**Youth's right to due process was not violated by state's untimely filing of motion to invoke adult portion of his sentence since his trial counsel received notice of the hearing two weeks in advance.**

## CASE DECISION LIST

**106128** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v TYREZ STEVENSON

Affirmed.

Melody J. Stewart, J., Tim McCormack, P.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Crim.R. 11(C)(2)(a); guilty plea; maximum penalty; presumption of prison time.*

*The Crim.R. 11(C)(2)(a) duty to inform a defendant of the maximum sentence does not require the court to determine that the defendant has an understanding of any statutory presumption in favor of incarceration.*

**106217** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ROSUE C. PIERCE

Affirmed.

Melody J. Stewart, J., Mary Eileen Kilbane, P.J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Final order; record on appeal; judicial notice.*

*Appellate court will not take judicial notice of proceedings occurring in a different case involving the defendant because doing so would violate the rule that an appellate court cannot add new material to the record and decide the appeal using the new material.*

**106314** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
N. P. v T. N., ET AL.

Affirmed.

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

**KEY WORDS:** *Civil stalking protection order; contempt; violation; neighbors; property; R.C. 2903.214; petition; civil; discovery; R.C. 2903.211; menacing by stalking; pattern of conduct; mental distress; video camera; reporting; police; abuse of discretion; competent, credible evidence.*

*Upheld trial court's decisions to issue civil stalking protection orders against appellants, and to find appellee/cross-appellant in contempt of court for violating conditions stated in an earlier civil stalking protection order that had been issued against her. Competent, credible evidence was presented to show appellants*

## CASE DECISION LIST

(Case 106314 continued)

**knowingly engaged in a pattern of conduct that caused appellee mental distress by continuously monitoring appellee's activities on her property by video camera, constantly reporting unfounded activities to authorities, and disregarding property lines. Contempt finding against cross-appellant was also supported by the record.**

**106375** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ANTROME J. POWELL

Affirmed.

Tim McCormack, P.J., Anita Laster Mays, J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS: Maximum sentence; felony sentence review; R.C. 2953.08(G)(2); supported by the record; R.C. 2929.11 and 2929.12.**

**The court considered the principles and purposes of felony sentencing set forth in R.C. 2929.11 and the sentencing factors set forth in R.C. 2929.12 before imposing a maximum sentence. The imposition of a maximum sentence is therefore supported by the record.**

**106380** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v B.H.

Reversed and remanded.

Kathleen Ann Keough, J., Mary Eileen Kilbane, P.J., and Mary J. Boyle, J., concur.

**KEY WORDS: R.C. 2953.32(C)(2); prior sealed record; expungement; findings.**

**Trial court's judgment summarily denying defendant's application for expungement reversed where trial court did not place its findings on the record to demonstrate compliance with R.C. 2953.32, including whether trial court exercised its discretion under R.C. 2953.32(C)(2) to not consider applicant's prior sealed convictions in considering her application.**

**106409** PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: ESTATE OF ANGELA GERMALIC

Affirmed.

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

## **CASE DECISION LIST**

(Case 106409 continued)

**KEY WORDS: R.C. 2109.32(A)/probate/hearing.**

**The trial court did not err where it denied appellant's motion regarding disposition of decedent's residential home without first conducting a hearing. The matter was settled by the validity of decedent's will that the residence be bequeathed to appellant's brother.**