

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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July 26, 2018

**105218** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MALIK M. NORMAN

Affirmed.

Frank D. Celebrezze, Jr., J., Melody J. Stewart, P.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *R.C. 2929.11; R.C. 2929.12; felony sentencing purposes and principles; Crim.R. 32.1; motion to withdraw guilty plea.*

*The trial court's imposition of an 11-year prison sentence was within the permissible statutory range for first-degree felonies, and the trial court considered the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12. Thus, the sentence was not contrary to law. The trial court's denial of defendant's motion to withdraw his guilty plea was not error because the defendant failed to demonstrate that he was actually innocent and failed to demonstrate that he did not enter his guilty plea voluntarily, intelligently and knowingly.*

**105806** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v LARRY ARTHUR MCGOWAN

Affirmed.

Frank D. Celebrezze, Jr., J., Tim McCormack, P.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Consecutive sentence; R.C. 2929.14(C)(4); statutory findings; R.C. 2953.08; recommended sentence.*

*The trial court made the statutorily required findings necessary to impose consecutive sentences under R.C. 2929.14(C)(4), and the findings were clearly and convincingly supported by the record. The defendant had notice that the trial court could deviate from the agreed recommended sentence, therefore, he could not have had a reasonable expectation that the trial court could only impose the agreed recommended sentence.*

**105955** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: M.W.

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Affirmed.

Tim McCormack, J., Eileen A. Gallagher, A.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Child support; deviation; R.C. 3119.23; abuse of discretion; findings of fact and conclusions of law; court costs.*

*The juvenile court's decision to grant Father's objection to the administrative order of child support, in part, to grant Mother's motion for past care, in part, and to deny Father's motion for child support was not an abuse of discretion. The court considered the relevant statutory factors and law, as well as the testimony and evidence presented by the parties, including the parties' income disparity and Father's increased parenting time. The juvenile court did not err in failing to provide findings of fact and conclusions of law. The court's opinion, the transcripts, and the 9(C) statement of evidence provided an adequate basis upon which to review the issues upon appeal. The juvenile court did not abuse its discretion in ordering Father to pay one-half the court costs where both Mother and Father prevailed on their motions to some extent.*

<b>105958</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v MIKE NICHOLSON			

Affirmed.

Melody J. Stewart, P.J., Mary J. Boyle, J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Motion to withdraw guilty plea; res judicata; retained counsel.*

*Issues raised in postsentence motion to withdraw guilty plea were res judicata because they were raised and rejected in earlier petition to vacate conviction.*

<b>106143</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v CHARLES H. DAVENPORT			

Affirmed.

Mary J. Boyle, P.J.; Sean C. Gallagher, J., concurs; Larry A. Jones, Sr., J., dissents with separate opinion.

**KEY WORDS:** *Ineffective assistance of counsel, not guilty by reason of insanity, R.C. 2901.04(A)(14).*

*The defendant's trial counsel was not ineffective for failing to pursue a plea of not guilty by reason of insanity because the defendant's actions and statements to police show that he knew that setting the victim's house on fire was wrong.*

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**106279** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v HERBERT O. ROBERTSON

Affirmed.

Eileen A. Gallagher, A.J., Eileen T. Gallagher, J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Hearsay; Evid.R. 801(C); Evid.R. 802; explanation of investigation; harmless error; manifest weight of the evidence.*

*Although detective's testimony regarding what victim told him about his encounter with defendant likely went beyond what is permissible in describing the steps in an investigation, in light of other evidence presented, there was no reasonable possibility that the improper testimony contributed to defendant's convictions such that the admission of the testimony was harmless beyond a reasonable doubt. Defendant's convictions were not against the weight of the evidence.*

**106345** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ROBERT A. SALVATI v ANTHONY-LEE SCREEN PRINTING, INC.

Affirmed.

Melody J. Stewart, J., Eileen T. Gallagher, P.J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *Negligence; independent contractor; frequenter; open and obvious.*

*Owner of premises had no duty to warn independent contractor of dangers posed by unguarded fan because the evidence showed that the independent contractor was aware of the unguarded fan and nevertheless put his hand into the fan to check to see if the fan was operating.*

**106363** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MAURICE FREEMAN

Affirmed.

Melody J. Stewart, P.J., Frank D. Celebrezze, Jr., J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Res judicata; sentencing; firearms specification.*

*Court does not err by overruling a postconviction motion challenging a sentence as it relates to a firearms specification when the defendant could have asserted the challenge on direct appeal.*

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**106454** CLEVELAND MUNI. C CRIMINAL MUNI. & CITY  
CITY OF CLEVELAND v RONNIE WILLIAMS

Dismissed.

Frank D. Celebrezze, Jr., J., Melody J. Stewart, P.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *R.C. 2945.67; Cleveland Codified Ordinances 605.11; fare evasion; Fourth Amendment; constitutional questions; constitutional avoidance.*

*It was not absolutely necessary for the trial court to sua sponte raise or address the Fourth Amendment issue regarding the applicable fare enforcement policy. Furthermore, the Fourth Amendment issue is underdeveloped in the record before this court. Accordingly, this court declines to exercise the discretionary authority under R.C. 2945.67(A) to review the trial court's substantive legal ruling and dismisses appellant's appeal.*

**106459** D ORIGINAL ACTION  
STATE OF OHIO, EX REL. TRI EAGLE FUELS LLC v  
WILLIAM DAWSON, JUDGE EAST CLEVELAND MUNICIPAL COURT

Writ denied. See journal entry and opinion of same date.

**KEY WORDS:** *Jurisdictional-priority rule; forcible entry and detainer action, common pleas court; municipal court; and jurisdiction.*

*The priority of jurisdiction rule did not patently and unambiguously deprive a municipal court judge of jurisdiction to hear a forcible entry and detainer claim. He had sufficient jurisdiction to determine his own jurisdiction.*

**106486** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v WILLIE SMITH

Affirmed.

Tim McCormack, P.J., Frank D. Celebrezze, Jr., J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Motion to correct void judgment; aggravated murder; kidnapping; inconsistent verdicts; res judicata; consecutive sentences*

*Appellant's argument that a finding of not guilty of a felony murder specification resulted in an acquittal of aggravated murder is barred by res judicata. Appellant's argument that his sentences should be vacated because the trial court failed to impose mandatory consecutive sentences is meritless because the trial court imposed consecutive sentences.*

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**106491** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v MAURICE SINKFIELD

Affirmed.

Melody J. Stewart, P.J., Sean C. Gallagher, J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Judicial release; Article I, Section 1 of the Ohio Constitution.*

*Court did not abuse its discretion by revoking judicial release when defendant failed to report to his probation officer as required. Court properly rejected defendant's argument that he did not report because police officers of a neighboring community allegedly threatened him, thus violating his right to happiness and safety as guaranteed by Article I, Section 1 of the Ohio Constitution because that section is not self-executing. Those rights were guaranteed in the form of criminal and civil statutes that protected the defendant from alleged police misconduct.*

**106497** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
EVELYN F. UNDERWOOD, ET AL. v JOSEPH DURHAM, ET AL.

Reversed and remanded.

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

**KEY WORDS:** *Civ.R. 60(B); excusable neglect; ignorance of the law.*

*Court erred in granting Civ.R. 60(B) relief by finding that an attorney's act was excusable neglect when he voluntarily dismissed client's case with prejudice after taking representations made in a motion to dismiss at face value without conducting any independent research. Ignorance of the law is not excusable neglect for purposes of Civ.R. 60(B) relief.*

**106507** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
LORENZO GUTIERREZ-GORDILLO v TOMO HIBACHI RESTAURANT AND LOUNGE, LLC, ET AL.

Reversed and remanded.

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

**KEY WORDS:** *Arbitration; contract; addendum.*

*Addendum to an operating agreement that added a new investor made the new investor a member to the original terms of the operating agreement, including arbitration of disputes arising out of*

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(Case 106507 continued)

**the operation of the business.**

**106513** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v H.M.

Affirmed.

Frank D. Celebrezze, Jr., J., and Melody J. Stewart, P.J., concur; Kathleen Ann Keough, J., concurs in judgment only with separate opinion.

**KEY WORDS:** *App.R. 11.1; Loc.R. 11.1; sealing of criminal conviction; R.C. 2953.32.*

*The trial court did not abuse its discretion in granting defendant's application to seal his conviction. Pursuant to R.C. 2953.32, the trial court was not required to make specific findings, but the trial court was required to consider the reasons for and against granting the application for sealing the conviction, which was evidenced by the record.*

**106522** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v CHARLES W. STOVES

Affirmed.

Larry A. Jones, Sr., J., Tim McCormack, P.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Right to counsel; Crim.R. 11/guilty plea.*

*Where appellant failed to allege any jurisdictional defect, his guilty plea waived the issue of denial of his motion for new counsel.*

*Appellant was determined to be competent to stand trial; the trial court engaged appellant in a proper plea colloquy; appellant indicated that he was not on any type of medication that would affect his ability to understand the proceedings; appellant stated that he understood what was going on; and appellant never asked any questions of the court. Appellant's guilty plea was made knowingly, intelligently, and voluntarily.*

**106538** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v LEON HICKS

Affirmed.

Melody J. Stewart, P.J., Sean C. Gallagher, J., and Anita Laster Mays, J., concur.

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(Case 106538 continued)

**KEY WORDS:** Guilty plea; consecutive sentences; presentence investigation report; App.R. 16(A)(7); ineffective assistance of counsel.

**Presentence investigation report supported trial court's application of sentencing factors and findings made for consecutive service of sentences with respect to defendant's juvenile history, his recidivism risk, and the facts underlying the conviction.**

**106698** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: O.S., ET AL.

Affirmed.

Mary J. Boyle, J., Eileen T. Gallagher, P.J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Authentication of medical records, abuse of discretion, Evid.R. 901, Evid.R. 902(8), sufficiency, permanent custody, R.C. 2151.414(B)(1), R.C. 2151.414(D).*

***The trial court properly admitted medical records concerning the mother's mental illness because the records were self-authenticating under Evid.R. 902(8) because they were accompanied by a certificate of acknowledgment executed by a notary public. There was sufficient evidence supporting the trial court's award of permanent custody of the children to the Cuyahoga County Division of Child and Family Services because the children were in CCDCFS's temporary custody for over 12 months in a consecutive 22-month period between January 2015 and June 2016 and terminating the mother's parental rights was in the children's best interests.***