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Court of Appeals, Eighth Appellate District

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October 11, 2018

105824 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v COREY W. THOMAS

Affirmed and remanded.

Patricia Ann Blackmon, J., Tim McCormack, P.J., and Melody J. Stewart, J., concur.

KEY WORDS: *Guilty plea; Crim.R. 11; R.C. 2151.23(I), 2152.03 and 2152.12(J); statute of limitations; rape.*

Trial court had subject matter jurisdiction where defendant was indicted for rape after attaining adulthood; after the court learned that defendant had been detained as a juvenile for offense, it properly transferred matter to juvenile court and defendant was in turn bound over to general division; trial counsel was not ineffective for failing to file a motion to dismiss under statute of limitations; trial court complied with Crim.R. 11 in accepting guilty plea and in properly advising defendant of constitutional and nonconstitutional rights; matter would be remanded for defendant to receive jail-time credit for juvenile detention.

106196 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DONALD M. KELLER

Affirmed.

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

KEY WORDS: *Rape, substantially impaired, knowledge, voluntary intoxication, sleep, Evid.R. 403(A), flight.*

Defendant's rape conviction is upheld where sufficient evidence was presented that the defendant knew or had reasonable cause to believe that the victim was substantially impaired. The evidence showed that the defendant was with the victim while she consumed alcohol and smoked marijuana. The victim was also asleep when the rape occurred. The trial court allowed irrelevant testimony to be presented, but the error was harmless because both the victim and the defendant testified, allowing the jury to assess their credibility without relying on irrelevant testimony. The jury instruction on flight was harmless error because the defendant testified about his motives for leaving the scene.

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106273 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v HENRY A. JORDAN

Affirmed.

Patricia Ann Blackmon, J., Melody J. Stewart, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Rape; aggravated burglary; kidnapping; sufficiency of the evidence; manifest weight of the evidence; ineffective assistance of counsel; prosecutorial misconduct; cumulative error.*

Convictions for rape, aggravated burglary, and kidnapping affirmed. Victim's testimony that defendant raped her is sufficient to convict defendant of the crimes charged. Despite inconsistencies in victim's testimony, convictions are not against the manifest weight of the evidence. Counsel not ineffective for failing to further pursue theory that victim's fiancé raped her, because victim told police that her sexual relationship with fiancé was consensual. Defendant's claim of prosecutorial misconduct fails, as there is no indication that fiancé's criminal history was exculpatory evidence. Without multiple harmless errors, there can be no reversal based on the cumulative error doctrine.

106381 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v JAMES GRUNT, JR.

Affirmed.

Patricia Ann Blackmon, J., Eileen A. Gallagher, A.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Community control sanctions; interior inspection of property; housing code violation; misdemeanor sentencing; constitutionality of inspection; privacy expectations.*

Court's imposition of interior property inspection as a condition of community control sanctions imposed for exterior housing code violations is constitutional.

106442 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
KENNETH C. PODOR v ALBERT HARLOW, ET AL.

Affirmed.

Anita Laster Mays, J., Melody J. Stewart, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Prof.Cond.R. 1.2, 1.7, 1.10, 1.13, 3.4, and 3.7; disqualification of opposing counsel; conflict of interest; loyalty to organization; counsel as witness.*

The trial court did not abuse its discretion in granting appellee's

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motion to disqualify opposing counsel from representing affiliated business organizations and their trustees, employees, directors, and officers. A substantial risk of a conflict of interest exists where counsel is a named party to the proceedings; served as business counsel for the codefendant businesses; represented codefendant officers, directors, trustees, and employees against appellee in a prior litigation as well as the current action; may testify as witnesses; or who will be unable to properly defend their clients due to adverse interests.

106566 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RICHARD SWANSON

Reversed and remanded.

Mary J. Boyle, J., Eileen T. Gallagher, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Petition for postconviction relief, R.C. 2953.23(A)(1), res judicata.*

The trial court lacked jurisdiction over the defendant's petition for postconviction relief because the defendant did not claim that he was unavoidably prevented from discovering facts upon which he relied in his petition or that the United States Supreme Court has recognized a new federal or state right that applies retroactively to him.

106613 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ROCKSIDE-77 PROPERTIES LLC v PARTNERS FINANCIAL GROUP, LLC, ET AL.

Affirmed in part, reversed in part, and remanded.

Mary Eileen Kilbane, J., Eileen A. Gallagher, A.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Lease; landlord; lessor; lessee; rent; contract; personal guaranty; contract interpretation; matter of law; de novo; damages; reasonable certainty.*

Judgment is affirmed in part, reversed in part, and remanded for the trial court to enter judgment that the personal guaranty is capped at \$6,000. The trial court erred, as a matter of law, in interpreting the guaranty to find that lessee made only 11 qualifying "rent" payments and that defendant's personal obligation under the guaranty was reduced only to \$49,000. With regard to the damages award, the defendants did not offer any evidence demonstrating that lessor's calculations are incorrect. The defendants did not dispute the amount owed; rather, they assert that lessor's damages must be incorrect because it offered different accountings at different times. Accordingly, there is sufficient, credible evidence in the record that supports lessor's assessment of damages, including late fees and interest, with reasonable certainty.

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106653 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANDREY BRIDGES

Affirmed.

Tim McCormack, P.J., Sean C. Gallagher, J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *Postconviction petition; new evidence; errors in sentencing; res judicata.*

Appellant's petition for postconviction relief is untimely where his petition was filed more than three years after the trial transcript in his direct appeal was filed and he presents no new evidence in support of his claims. His claims alleging sentencing errors are also barred by res judicata because they could have been raised in his direct appeal.

106655 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ALONZO PATTERSON

Affirmed.

Tim McCormack, P.J., Eileen T. Gallagher, J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Involuntary manslaughter; firearm specification; attempted murder; tampering with evidence; carrying a concealed weapon; negotiated plea agreement; jointly recommended sentence; consecutive sentence; R.C. 2929.14; R.C. 2953.08(D)(1); authorized by law.*

Because Patterson's 25-year sentence was within the range jointly recommended by Patterson and the state and authorized by law, it is not subject to appellate review, despite the absence of an explicit agreement as to consecutive sentences.

106690 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v DARNELL CARTER

Dismissed.

Tim McCormack, P.J., Anita Laster Mays, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Postconviction relief; R.C. 2953.21; interlocutory order; final, appealable order; R.C. 2505.02; substantial right.*

The trial court's denial of appellant's motion to amend his petition for postconviction relief is an interlocutory order and does not affect a substantial right that appellant would not be able to protect

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without immediate review where his original petition remains pending.

106713 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: T. B-G., ET AL.

Affirmed.

Melody J. Stewart, P.J., Patricia Ann Blackmon, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Termination of parental rights; permanent custody; in-camera interview; R.C. 3109.04(B)(1); confidentiality; ineffective assistance of counsel; guardian ad litem report; hearsay.*

Although R.C. 3109.04(B)(1) required the court to conduct an in-camera interview of a child upon the guardian ad litem's request, it had no obligation to give notice of the in-camera interview to the other parties and had discretion to decide whether to allow attorneys for the other parties to be present during the interview.

Parent failed to establish any prejudice from trial counsel's failure to subpoena child abuse hotline records, so trial counsel was not ineffective.

A report issued by a guardian ad litem is offered to explain the basis for a recommendation, so a guardian ad litem may testify to others' out-of-court statements to explain how the information conveyed in those statements shaped her conclusions. It follows that a guardian ad litem's report is not considered evidence and a trial court may consider the guardian ad litem's report despite hearsay within it, so long as the trial court provides due process protection for the parent by making the guardian ad litem available for cross-examination.

106723 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DAVEION PERRY

Affirmed.

Kathleen Ann Keough, J., Mary J. Boyle, P.J., and Sean C. Gallagher, J., concur.

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

The trial court properly denied the defendant's postconviction motion to withdraw his guilty plea on the basis of res judicata where all of the issues presented in the motion had been raised in the defendant's direct appeal of his conviction.

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106826 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: J.D., ET AL.

Affirmed.

Larry A. Jones, Sr., J., Mary Eileen Kilbane, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *R.C. 2151.414/permanent custody; best interest of the child; sufficiency; manifest weight.*

Evidence demonstrated that the children were in need of a legally secure permanent placement, and after the courts's review of the necessary factors enumerated in R.C. 2151.414 and a show of sufficient evidence, the trial court determined that it was in the best interest of the children to grant permanent custody to the agency. The trial court's decision was not against the manifest weight of the evidence.

106895 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DANNIE R. JUSTICE

Dismissed.

Frank D. Celebrezze, Jr., J., Eileen T. Gallagher, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Anders; App.R. 16(C); merger; R.C. 2941.25(A); R.C. 2953.08(A); appeal as a matter of right; R.C. 2929.11; R.C. 2929.12.*

An independent review of the record demonstrates that there are no nonfrivolous issues to argue in this case involving merger of allied offenses or appellant's sentence.

106904 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KATAWN TAPP

Affirmed.

Eileen A. Gallagher, A.J., Mary Eileen Kilbane, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Postsentence motion for jail-time credit; R.C. 2967.191; res judicata; consecutive sentences.*

Defendant's second postsentence motion for jail-time credit was barred by res judicata. Even if motion was not barred by res judicata, defendant was not entitled to jail-time credit for the time he allegedly spent in the Cuyahoga County jail because when he was confined in the Cuyahoga County jail, he was already serving his sentence in an unrelated Lake County case and the sentences in

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current case and Lake County case were ordered to be served consecutively.