

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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September 13, 2018

105876 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v BRYAN WILSON

Affirmed and remanded.

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

KEY WORDS: *Crim.R. 14, joinder; severance; waiver; effective assistance of counsel; consecutive sentences; nunc pro tunc.*

Defendant's guilty plea waived his right to challenge the denial of his Crim.R. 14 motion to sever, and he failed to demonstrate how the joinder of his cases affected his decision to enter into a guilty plea. Defendant failed to demonstrate how the trial court's decision denying his motion for removal of counsel affected the knowing and voluntary nature of his plea. He was not denied effective assistance of counsel when counsel agreed to a recommended sentence. The record demonstrated that the sentence was only a recommendation and not binding, and the defendant could have advocated for a lesser sentence. Consecutive sentence findings were properly made and supported by the record; the issuance of a nunc pro tunc is the proper remedy when the trial court fails to incorporate those findings in the sentencing journal entry.

106305 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTONIO OLIVER

Affirmed.

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

KEY WORDS: *Right to confrontation; Skype; motion to suppress; hotel guest; search.*

Trial court did not err in allowing a witness who was unavailable to testify at trial via Skype. Trial court committed harmless error in allowing another witness who was merely inconvenienced to testify at trial via Skype. Appellant's burden of proving on appeal whether a motion to suppress would have been granted is difficult based on the trial transcript record. But even looking at the record as presented, there was not a reasonable probability that a motion to suppress would have been granted

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106319 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MICHAEL BUEHNER

Reversed and remanded..

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

KEY WORDS: *Motion for leave to file motion for new trial; Crim.R. 33; motion for new trial; Brady; material; unavoidably prevented; newly discovered evidence; exculpatory evidence; reasonable probability; postconviction relief; ineffective assistance of counsel.*

Denial of motion for leave to file a motion for new trial without a hearing was an abuse of discretion where the state failed to disclose exculpatory evidence in pretrial. However, because it was unclear whether the exculpatory evidence would have changed the outcome of the trial, the case was remanded for a hearing on the motion for new trial.

106414 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEON A. WALKER

Reversed and remanded.

Eileen T. Gallagher, P.J.; Melody J. Stewart, J., concurs; Sean C. Gallagher, J., concurs in judgment only.

KEY WORDS: *Preindictment delay; due process; actual prejudice; burden of proof; unavailability.*

Trial court erred in finding actual prejudice caused by preindictment delay where defendant failed to establish that two of the three "missing" witnesses were truly unavailable and failed to show actual prejudice as a result of the actual availability of the third witness.

106450 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RANAU D. JOHNSON

Affirmed in part; vacated in part; reversed in part; remanded.

Sean C. Gallagher, P.J., Larry A. Jones, Sr., J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Attempted felony murder; R.C. 2923.02 and 2903.02(B); cognizable claim; void; vacate; merged; resentence; aggravated arson; R.C. 2909.02(A)(1); R.C. 2909.02(A)(2); knowingly; R.C. 2901.22(B); substantial risk; R.C. 2901.01(A)(8); serious physical harm to persons; R.C. 2901.01(A)(5); expert; Evid.R. 702;*

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abuse of discretion; qualified; reliable; Crim.R. 52(B); plain error; consecutive sentences; R.C. 2929.14(C)(4); restitution; R.C. 2929.18(A)(1); reasonable degree of certainty; competent, credible evidence; evidentiary hearing; remand.

Vacated appellant's conviction and sentence for felony attempted murder under R.C. 2923.02 and 2903.02(B) because it is not a cognizable claim and is void. Appellant's convictions for aggravated arson were not against the manifest weight of the evidence, and the challenged convictions were based upon sufficient evidence. The trial court did not abuse its discretion by permitting expert to testify as to the cause and origin of the fire, and no plain error occurred. Trial court's imposition of consecutive sentences was upheld. The amount of restitution ordered was arbitrary because the state did not present sufficient competent, credible evidence from which the trial court could discern the appropriate amount of restitution to a reasonable degree of certainty. Case was remanded to the trial court for resentencing on Count 2 only, which had been merged with the vacated count, and for an evidentiary hearing to determine the appropriate amount of restitution.

106462 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RAVONTE CARTER

Affirmed.

Kathleen Ann Keough, J., Eileen T. Gallagher, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: Dying declaration; excited utterance; other acts evidence; motive; limiting instruction; felony murder; independent-felony/merger doctrine; jury instructions; lesser included and inferior offenses; provocation; manifest weight of the evidence.

Defendant's conviction for murder and felonious assault affirmed where (1) the victim's statement to his cousin made immediately after the shooting that the defendant had shot him, although not a dying declaration, was properly admitted as an excited utterance; (2) the trial court did not abuse its discretion in admitting other acts evidence of an incident between the defendant and the victim that created a motive for defendant to shoot the victim; (3) the trial court did not err in not giving a limiting instruction regarding the other acts evidence because there was no evidence the jury used the other acts evidence to convict the defendant because he was a bad person; (4) the defendant's conviction for felony murder was not unconstitutional because this court does not recognize the independent-felony/merger doctrine; (5) there was no plain error in the trial court's failure to instruct on involuntary manslaughter and aggravated assault because there was no evidence the defendant had been provoked to shoot the victim; and (6) the defendant's convictions were not against the manifest weight of the evidence.

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106483 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CESAR HERNANDEZ

Affirmed in part; reversed in part.

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

KEY WORDS: *Allied Offenses, consecutive sentences, potential deportation.*

Trial court erred in failing to merge allied offenses at sentencing after the parties had previously stipulated to merger. Trial court did not err in imposing consecutive sentences. The potential deportation of the defendant following the conclusion of his prison terms was not a valid reason to preclude the imposition of consecutive sentences.

106490 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JASON E. WHITE

Affirmed in part, modified in part.

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

KEY WORDS: *Aggravated murder; prior calculation and design; sufficiency of evidence; ineffective assistance of counsel; allied offenses.*

Court had sufficient evidence to show that defendant acted with prior calculation and design to commit aggravated murder when he gave a confession to the police in which he said he made the decision to kill his wife, spent time smoking a cigarette with her and waited until she fell asleep, went to his daughter's room to block her door to keep her inside her room, and folded a blanket for use as a muffle before shooting her in the head while she slept.

Defense counsel did not violate any essential duty to client by admitting that defendant killed the wife and trying the case solely on the issue of prior calculation and design.

Although trial court erred by imposing sentence on allied offenses before then merging the counts into aggravated murder count, an appellate court can modify the sentence by vacating the sentences imposed on the allied offenses that were merged.

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106518 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHARLES BROWN

Affirmed.

Sean C. Gallagher, P.J., Larry A. Jones, Sr., J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Self-representation; Sixth Amendment; repeat violent offender; collateral attack; sufficiency of the evidence; R.C. 2903.11; inference stacking; R.C. 2953.08(G)(2).*

The defendant's right to self-representation was not violated because he abandoned his request for self-representation after a second attorney was appointed and the defendant accepted the representation; the finding of guilt on the repeat violent offender specification is not contrary to law because a defendant cannot collaterally attack the entry of conviction underlying the specification; there is sufficient evidence in support of the conviction for felonious assault under R.C. 2903.11(A)(2); and the trial court did not err in sentencing.

106520 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RAYMOND SAMUELS

Affirmed.

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

KEY WORDS: *Allied offenses; sentence; void; res judicata; findings.*

Where the trial court made no findings that the offenses were allied prior to imposing separate sentences for each offense, the sentence was not void and the defendant should have raised any issue regarding allied offenses in his direct appeal. Because he did not do so, his postconviction motion to correct his sentence was barred by res judicata, and the trial court therefore properly denied the motion.

106575 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CITIZENS BANK, N.A., ETC. v ABRAHAM DAVID, ET AL.

Affirmed.

Kathleen Ann Keough, J., Eileen T. Gallagher, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Civ.R. 24; intervene; nonparty; named-party defendant.*

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Trial court did not abuse its discretion in denying appellant's Civ.R. 24 motion to intervene because the appellant was already a named-party defendant to the action. Civ.R. 24 governs a nonparty's right to intervene in an action.

106585 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v CEDRIC PARKER

Affirmed.

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

KEY WORDS: Motion for resentencing; res judicata; single, lump-sum sentence for postrelease control; void sentence; R.C. 2967.28(F)(4)(c).

Defendant's argument that he was not properly advised regarding postrelease control prior to the entry of his guilty pleas and that the trial court, therefore, erred in accepting his guilty pleas was barred by res judicata. Defendant's sentence was not void for failure to impose postrelease control separately for each individual offense. R.C. 2967.28(F)(4)(c) precludes the trial court from imposing more than one period of postrelease control in cases that involve multiple convictions. Trial court properly notified defendant that he was subject to a mandatory five-year period of postrelease control.

106589 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v LARRY GRAY

Affirmed.

Kathleen Ann Keough, J., Sean C. Gallagher, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: Petition for postconviction relief; res judicata; untimely.

Trial court did not abuse its discretion in denying petitioner's petition for postconviction relief where petitioner's ineffective assistance of counsel claim was barred by res judicata, and petitioner's structural error claim due to judicial bias was untimely filed.

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106635 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
WILLIE L. BANDY v CUYAHOGA COUNTY PROSECUTOR, ET AL.

Affirmed.

Mary Eileen Kilbane, P.J., Tim McCormack, J., and Mary J. Boyle, J., concur.

KEY WORDS: *Motion to dismiss; declaratory judgment; injunctive relief; criminal conviction; collateral attack.*

The trial court properly granted the Civ.R. 12(B)(6) motions to dismiss of defendants-appellees, the Cuyahoga County prosecutor and Ohio Adult Parole Authority, in response to plaintiff-appellant's complaint requesting a declaratory judgment and injunctive relief to enforce his plea agreement in a separate criminal matter. Plaintiff-appellant's amended complaint failed to state a claim upon which relief could be granted. Essentially, the amended complaint sought to obtain plaintiff-appellant's release from custody and constituted a collateral attack on his conviction and sentence for murder. It is well established that a declaratory judgment action cannot be used to collaterally attack a criminal conviction or sentence. Therefore, the trial court did not err in dismissing plaintiff-appellant's amended complaint because it sought relief that the trial court was unable to grant.

106825 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: T.S.

Affirmed.

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

KEY WORDS: *Serious youthful offender, R.C. 2152.13, indictment, speedy trial.*

Trial court did not err in dismissing a serious youthful offender indictment where the state failed to comply with the notice requirements set forth in R.C. 2152.13(A)(4). The state's proposed interpretation of the statute would have allowed it to evade the requirements and the juvenile's speedy trial right set forth therein.