

CASE DECISION LIST

December 19, 2019

107939 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v GRAIG A. BROWN

108145 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v GRAIG A. BROWN

Affirmed; remanded for resentencing.

Kathleen Ann Keough, J., Mary Eileen Kilbane, A.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Motion to withdraw plea; presentence; misdemeanor offense; maximum jail time; community control sanctions; R.C. 2929.25(A)(1).*

Trial court did not abuse its discretion in denying defendant's presentence motion to withdraw his plea where defendant was represented by counsel, given a full Crim.R. 11 hearing before he pled, the court gave full consideration to defendant's motion to withdraw his plea, and the motion was based merely on a change of heart; trial court erred in sentencing defendant to maximum jail time followed by community control where the court did not suspend a portion of the jail time pursuant to R.C. 2929.25(A)(1).

108050 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v GREGGORY JONES

Affirmed in part; vacated in part.

Michelle J. Sheehan, J., Mary Eileen Kilbane, A.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Felonious assault; sufficient evidence; manifest weight; firearm specifications.*

Appellant's convictions of felonious assault and tampering with evidence and the one-year firearm specifications accompanying these offenses are affirmed. However, as appellant's act of tampering with evidence consisted of dismantling the very firearm used to commit the felonious assault, appellant did not "use" the firearm to "facilitate" the tampering offense, and therefore, the three-year firearm specification accompanying the offense of tampering with evidence is vacated.

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108155 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JONATHAN MAGWOOD

Affirmed.

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

KEY WORDS: *Postconviction relief petition; ineffective assistance of counsel; Brady violation.*

The court did not err when it denied defendant's postconviction relief petition. There was no evidence that counsel was deficient, and there was no evidence that defendant was prejudiced. Police reports involving the victim were inadmissible under Evid.R. 608 and 609. Additional mitigation evidence concerning defendant did not prejudice defendant, as the court stated that it took defendant's history of being abused into consideration. Defendant failed to show that the alleged Brady evidence was material and would have resulted in a different outcome.

108198 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOSE A. CRUZ

108199 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOSE A. CRUZ

108731 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOSE A. CRUZ

Affirmed.

Mary Eileen Kilbane, A.J., Kathleen Ann Keough, J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Postsentence motion to withdraw guilty plea; motion to terminate sex offender status; Crim.R. 11; constitutional rights; waiver; strict compliance; cruel and unusual punishment.*

Judgment affirmed. Defendant's guilty plea was valid because the court explained each of the defendant's constitutional rights and explained that by entering a guilty plea, the defendant was waiving those rights. In addition, this court has previously found that the registration requirements accompanying defendant's Tier III sex offender classification do not constitute cruel and unusual punishment.

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108246 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v BENTLEY AXSON

Affirmed.

Mary Eileen Kilbane, A.J., Sean C. Gallagher, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Guilty plea; Crim.R. 11(C); knowingly, intelligently, and voluntarily.*

When a defendant enters a plea in a criminal case, the plea must be made knowingly, intelligently, and voluntarily. The purpose of Crim.R. 11(C) is to convey relevant information to the defendant so that he or she can make a voluntary and intelligent decision regarding whether to plead guilty. We review the trial court's compliance with the requirements of Crim.R. 11(C) de novo. A trial court must strictly comply with constitutional rights set forth in Crim.R. 11(C)(2)(c) and substantially comply with the nonconstitutional rights set forth in Crim.R. 11(C)(2)(a) and (b).

In the instant case, Axson argues that his plea was not knowingly and intelligently made because the trial court misstated the law regarding his burden of proof when it stated that consent is a defense that requires direct testimony of either himself or the alleged victim.

Our independent review indicates that the trial court was merely giving its rationale for the 404(b) ruling and advising Axson that unless he took the witness stand, the other three cases would not be admitted, but that criminal case CR-01-402353-2A was admissible 404(b) evidence. At no point did the trial court advise Axson on the burden of proof. Axson was not misinformed as to the applicable law and cannot demonstrate any prejudice.

Here, there is nothing to suggest that but for the complained of statement, which Axson has taken totally out of context. As a result, we conclude that when Axson decided to plead guilty, he did so knowingly, intelligently, and voluntarily.

108251 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE I.L.J.

Affirmed in part; dismissed in part.

Mary J. Boyle, P.J., Kathleen Ann Keough, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Civ.R. 60(B); administrative support order; R.C. 3111.84; R.C. 2151.231; motion to show cause; attorney fees; final appealable order.*

Father's appeal of the trial court's judgment regarding contempt is dismissed for lack of final appealable order because the trial court

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(Case 108251 continued)

did not make a finding of contempt, impose a penalty or sanction for the contempt, or include a purge order giving father the opportunity to purge his contempt. The remaining judgment is a final order because it determined the outcome of several motions, each of which provided a separate and final order. The trial court did not err when it denied father's motion to vacate the February 2013 administrative support order because it was untimely. Finally, the trial court did not err when it denied father's motion to vacate the parenting order because the juvenile court had jurisdiction to decide the parenting action despite the fact that the child support action was pending on appeal.

108265 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v NELSON HERNANDEZ

Reversed and remanded.

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

KEY WORDS: *Evid.R. 404(B)/other acts evidence; motion for judgment of acquittal; manifest weight; jury instructions.*

The exceptions to Evid.R. 404(B) for admission of other acts evidence proposed by the state do not apply in this case; nor do any other exceptions apply. It was an abuse of discretion where the trial court allowed in such evidence.

108273 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEONDRE BONNER

Affirmed.

Kathleen Ann Keough, J., Mary Eileen Kilbane, A.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Allied offenses; waiver; rape.*

The transcript revealed that the parties agreed at the plea hearing that the rape offenses would not merge; thus, the issue is waived on appeal. The rape offenses involved different victims and distinct acts of sexual conduct; thus, not subject to merger.

108305 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v DEZMOND SCOTT

Affirmed.

Mary J. Boyle, P.J., Kathleen Ann Keough, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Menacing by stalking; R.C. 2903.211; sufficiency; manifest weight.*

The defendant's conviction for menacing by stalking was supported by sufficient evidence and was not against the manifest weight of the evidence.

108315 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v JAMILL SHABAZZ ABDUL, AKA, JAMIL A. SHABAZZ

Affirmed.

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

KEY WORDS: *Postconviction; R.C. 2953.21.*

Trial court properly denied successive petition for postconviction relief that did not meet the requirements of R.C. 2953.23, and was barred by res judicata.

108710 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE M.M.

Affirmed.

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

KEY WORDS: *Parental rights; R.C. 2151.414(B)(1)(a-e)/competent, credible evidence; R.C. 2151.414(D)(1)/permanent custody; best interest of the child.*

After considering the relevant factors in R.C. 2151.414(B)(1)(a-e) and 2151.414(D)(1), the trial court properly found there to be competent, credible evidence that it was in the best interest of the child to award permanent custody to the Agency.