

CASE DECISION LIST

July 11, 2019

106931 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v GEORGE ALLEN COLE

Affirmed.

Kathleen Ann Keough, J., Frank D. Celebrezze, Jr., P.J., and Raymond C. Headen, J., concur.

KEY WORDS: *Consecutive sentences; resentencing; res judicata.*

Upon appeal after resentencing, defendant's argument that the trial court erred in imposing consecutive sentences totaling 38 years was barred by res judicata because the appellate court affirmed the trial court's imposition of consecutive sentences on defendant's direct appeal; the limited remand after direct appeal for resentencing on two counts did not open the issue of consecutive sentences to further review after resentencing.

107351 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KEVIN GUNNELS

Affirmed in part, reversed in part, and remanded.

Eileen A. Gallagher, J., Patricia Ann Blackmon, J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *R.C. 2929.14; R.C. 2947.06; R.C. 2929.19; consecutive sentences; mitigation of penalty report; jail-time credit.*

The trial court did not err by imposing consecutive sentences where the court made the requisite statutory findings under R.C. 2929.14(C)(4) and the record supported consecutive sentences. The trial court did not abuse its discretion by denying defendant's request for a penalty mitigation report where there was no basis to conclude such report was necessary and the court otherwise considered a presentence investigation report at sentencing. The trial court erred by failing to calculate and journalize the amount of defendant's jail-time credit.

107584 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JU'VONTAY WHITAKER

107967 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JU'VONTAY WHITAKER

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Reversed and remanded.

Michelle J. Sheehan, J.: Eileen T. Gallagher, P.J., concurs (with separate opinion attached);
Raymond C. Headen, J., concurs with the majority opinion and with the separate concurring opinion.

KEY WORDS: *Sentencing; R.C. 2929.11 and 2929.12.*

The trial court's apparent misunderstanding of the record rebuts the presumption that the court properly considered the statutory sentencing factors. Because we find by clear and convincing evidence that the record does not support the sentence, appellant's sentence is reversed and the case remanded for resentencing.

107595	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JOHN CODY			
107607	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JOHN CODY, A.K.A., BOBBY THOMPSON			
107664	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v JOHN DONALD CODY			

Affirmed.

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

KEY WORDS: *R.C. 2953.21/postconviction petition; jurisdiction; law-of-the-case doctrine; res judicata; Crim.R. 33(A)(2) and (A)(6)/motion for new trial; abuse of discretion.*

The law-of-the-case doctrine was established where this court issued its journal entry and opinion on appellant's appeal on his convictions. Appellant's identical successive motion and arguments are barred. Additionally, appellant's argument regarding jurisdiction on all counts could have been raised in his appeal to overturn his convictions. Accordingly, that issue is now barred by res judicata.

Appellant's postconviction petition is untimely and appellant has failed to show that he was unavoidably prevented from discovering any new evidence for which his motion for a new trial could have been granted. There was no abuse of discretion where the trial court denied appellant's motions.

107636	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
MATTHEW MEEKINS v CITY OF OBERLIN, ET AL.			

Reversed.

Eileen A. Gallagher, J.; Frank D. Celebrezze, Jr., J., concurs; Patricia Ann Blackmon, P.J., dissents with separate opinion.

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(Case 107636 continued)

KEY WORDS: Summary judgment; Civ.R. 56; false arrest; malicious prosecution; 42 U.S.C. 1983; probable cause; arrest warrant; municipal liability; policy or custom; moving force behind constitutional violation; inadequacy of police training, staffing or supervision; deliberate indifference.

Trial court erred in entering summary judgment in favor of city because genuine issues of material fact existed regarding city's liability on appellant's claims for false arrest and malicious prosecution under 42 U.S.C. 1983 arising out of allegations that appellant was wrongfully arrested and prosecuted after police failed to properly investigate false claims made by his son's mother that appellant had sent threatening text messages and violated a civil protection order. Triable issues of fact existed as to whether police officer recklessly made misleading statements or omitted material information when requesting a warrant for appellant's arrest, whether municipal court judge would have issued the arrest warrant in the absence of the alleged misleading statements or omissions, whether the alleged inadequacy of the city's staffing, policies, training or supervision was obvious and so likely to result in the violation of the constitutional rights of potential defendants that the city could be found to be deliberately indifferent and whether but for the city's alleged policy or custom of inadequate staffing, training or supervision, appellant's constitutional rights would not have been violated.

107730 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MARK MILLER, ET AL. v CARDINAL CARE MANAGEMENT, INC., ET AL.

Affirmed.

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

KEY WORDS: *Motion to stay proceedings and compel arbitration; nonsignatories; arbitration agreement; nursing facility admission agreement.*

Trial court did not err in denying defendants' motion to stay proceedings and compel arbitration where the defendants, who were nonsignatories to the arbitration agreement, failed to demonstrate (1) how they could enforce the agreement despite their status as nonsignatories; (2) how the plaintiffs were bound by an agreement they too had not signed; and (3) that the plaintiffs' claims arose out of the nursing facility admission agreement, as required by the arbitration agreement.

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107756 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MARK ANDREW CHUPARKOFF

Affirmed.

Anita Laster Mays, J., concurs; Eileen T. Gallagher, P.J., concurs in judgment only and with the separate concurring opinion; Frank D. Celebrezze, Jr., J., concurs in part and concurs in judgment only in part with separate opinion.

KEY WORDS: *Crim.R. 32.1, postsentence motion to vacate plea, R.C. 2901.12, venue, ineffective assistance of counsel, res judicata.*

The trial court did not abuse its discretion in denying appellant's postsentence motion to withdraw or vacate his guilty plea which was filed after appellant served the six-month local incarceration portion of his sentence.

107832 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DANA STALLWORTH v DOUG WOODS, ET AL.

Affirmed.

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

KEY WORDS: *Mandate; jurisdiction; sanctions; frivolous; Civ.R. 11; R.C. 2323.51; subpoena.*

Trial court's decision to deny motions for sanctions pursuant to Civ.R. 11 and R.C. 2323.51 was not an abuse of discretion where the record supported the finding that the subpoena that caused the underlying lawsuit was peculiar; thus, the action was not frivolous despite judgment being rendered against the plaintiff. Originally assigned judge had jurisdiction to consider the motion for sanctions based on the appellate court's mandate.

107838 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MICHAEL ANTONYZYN, ET AL. v KEVIN KELLY, ET AL.

Affirmed.

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

KEY WORDS: *Civ.R. 60(B)/motion for relief from judgment; jurisdiction; standing; res judicata; substitute for appeal; Civ.R. 56(E)/summary judgment.*

The trial court's adoption of the magistrate's decision that appellant was properly served was not error. Appellant failed to produce any information sufficient to rebut the presumption of service.

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(Case 107838 continued)

Appellant's submitted documentation showing only two payments made towards the land contract was not sufficient enough to show that the land contract was paid in full. Further, appellant's defense of payment was insufficient to explain appellant's delay in filing his motion for relief from judgment.

Appellant's argument on summary judgment should have been raised in a direct appeal, not in a motion for relief from judgment. A motion for relief from judgment cannot be used as a substitution for a direct appeal.