

CASE DECISION LIST

November 14, 2019

107356 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v HALLE BUSEK

Affirmed.

Mary Eileen Kilbane, A.J., Larry A. Jones, Sr., J., and Raymond C. Headen, J., concur.

KEY WORDS: *Right to speedy trial; R.C. 2945.71(C)(2); 270 days; motion to dismiss on speedy trial grounds; subsequent charges; same facts. Judgment affirmed.*

Trial court's grant of defendant's motion to dismiss on speedy trial grounds was proper. Here, defendant was cited and pled guilty to possession of drug paraphernalia in municipal court. At the time of the traffic stop, the highway patrol officer identified the pills as oxycodone. Defendant was subsequently charged in common pleas court with drug possession almost a year later. Because the subsequent drug possession charge arose from facts that related to the original charge, the speedy trial clock for the underlying charges arose when the defendant was indicted in municipal court and her statutory speedy trial rights were violated when she was later indicted with drug possession.

107528 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ADRIAN JOHNSON, JR.

Vacated and remanded.

Patricia Ann Blackmon, J.; Eileen T. Gallagher, P.J., concurs in part and dissents in part with separate opinion; Mary J. Boyle, J., concurs in part and dissents in part with separate opinion.

KEY WORDS: *Felony sentences; consecutive sentences; judicial bias.*

Imposition of consecutive sentences reversed because the court did not make the appropriate findings under R.C. 2929.14(C). Individual felony sentences is affirmed. Judicial bias claim is without merit.

107558 PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
JERRY WRAY, DIRECTOR OHIO DEPT. OF TRANSPORTATION v BRANDON HIIRONEN, ET AL.

Affirmed.

Raymond C. Headen, J., Mary J. Boyle, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Appropriation; motion in limine; abuse of discretion;*

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(Case 107558 continued)

expert testimony; owner-opinion rule.

The trial court did not abuse its discretion or deny appellant-landowner procedural due process by granting motions in limine excluding or limiting testimony regarding future and speculative use of the subject property.

107714 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SHAWN REESE

Affirmed and remanded.

Mary J. Boyle, P.J., Patricia Ann Blackmon, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Judicial bias; due process; ineffective assistance of counsel.*

Defendant's due process rights were not biased when the trial court acted as the trier of fact in a bench trial after the court had accused the defendant of being untruthful at a pretrial hearing. Reese did not overcome the presumption of establishing that the trial court was biased or prejudiced against him. Further, because we found no evidence of judicial bias, Reese's trial counsel was not ineffective for failing to request that the trial judge remove himself from the case.

107899 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v NICHOLAS SMITH

Affirmed and remanded.

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

KEY WORDS: *Juvenile case; aggravated robbery; weapon; probable cause hearing; amenability; bindover; subject-matter jurisdiction; R.C. 2152.12; ineffective assistance of counsel; postrelease control notification; nunc pro tunc.*

*Judgment affirmed, but the matter remanded for the issuance of a nunc pro tunc entry to correct the postrelease control notification in trial court's sentencing journal entry. While the victims did not observe a gun and the police did not locate a gun, both victims testified that the one male said, "give me your keys or I'll shoot you in the * * * head" when they took the victim's car. These facts are sufficient to establish that there existed probable cause to believe defendant committed aggravated robbery. The general division had jurisdiction over all the charges, even the charges that the juvenile court found lacked probable cause, because, R.C. 2152.12(I) does not afford a juvenile court with the authority to dismiss counts on the basis of whether or not the state has established probable*

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cause. Defense counsel was not ineffective for failing to object to the indictment because the general division had jurisdiction over the charges that the juvenile court found lacked probable cause.

107925 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LARRY DAVIS

Affirmed in part; vacated in part; and remanded.

Frank D. Celebrezze, Jr., P.J., and Kathleen Ann Keough, J., concur; Eileen A. Gallagher, J., concurs in part and dissents in part with separate opinion.

KEY WORDS: Sufficiency; Crim.R. 29; venue; R.C. 2901.12(H); course of criminal conduct; manifest weight; Crim.R. 32; allocution.

Appellant's convictions were supported by sufficient evidence and are not against the manifest weight of the evidence. Appellant was denied his right of allocution under Crim.R. 32(A) prior to the imposition of sentence. Appellant's sentence is vacated, and the matter is remanded for resentencing.

108004 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v C.N.

108007 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v C.N.

Vacated and remanded.

Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur; Raymond C. Headen, J., concurs in judgment only.

KEY WORDS: Eligible offender, R.C. 2953.31.

The trial court erred in sealing the criminal conviction records of the appellee, and incorrectly determined that the appellee was an eligible offender under R.C. 2953.31.

108011 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
WILLIAM A. BREWER v NICOLE M. BREWER, ET AL.

Affirmed.

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

KEY WORDS: Contempt; abuse of discretion; settlement agreement; consent judgment; and fashioning an equitable remedy.

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(Case 108011 continued)

Decisions in contempt proceedings rest within the discretion of the trial court and will not be reversed on appeal absent an abuse of discretion. An abuse of discretion occurs when the trial court's judgment is unreasonable, arbitrary, or unconscionable. Contempt has been defined as the disobedience of a court order.

A settlement agreement is a contract designed to terminate a claim by preventing or ending litigation. The law highly favors settlement agreements, and a trial judge generally has discretion to promote and encourage settlements to prevent litigation. Thus, a settlement agreement is an issue of contract law. A settlement agreement, like any other contract, requires an offer, acceptance, consideration, and mutual assent between two or more parties with the legal capacity to act.

Under the terms of the settlement agreement at hand, the opposing parties were tasked with shouldering specific responsibilities. In this case, Nicole and Michelle's damaging conduct frustrated the purpose of the consent judgment. Their conduct caused William to undertake costly rehabilitative efforts to bring the property to the condition that would secure a sale at a price necessarily contemplated by the settlement agreement. Based on the actions of the parties that were not contemplated by the agreement, the trial court had to fashion an equitable remedy. As a result, we find no abuse of discretion in the trial court's decision not to find William in contempt.

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| 108043 | COMMON PLEAS COURT STATE OF OHIO v KAREEM HENNING | A | CRIMINAL C.P. |
| 108044 | COMMON PLEAS COURT STATE OF OHIO v KAREEM HENNING | A | CRIMINAL C.P. |
| 108045 | COMMON PLEAS COURT STATE OF OHIO v KAREEM HENNING | A | CRIMINAL C.P. |

Affirmed.

Raymond C. Headen, J., Eileen T. Gallagher, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Amenability hearing; R.C. 2152.12; severity of the crime; juvenile; discretionary bindover; psychologist report.*

The juvenile court acted in accordance with R.C. 2152.12 when determining whether the alleged juvenile offender should be transferred, pursuant to a discretionary bindover transfer, to adult court. The juvenile court weighed the applicable statutory factors, and the record shows a rational basis for the court's findings regarding those statutory factors. As a result, the juvenile court did not abuse its discretion when it transferred the case for criminal prosecution to the adult court.

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108071 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JEFFREY SQUIRES

Vacated and remanded.

Anita Laster Mays, P.J., Kathleen Ann Keough, J., and Raymond C. Headen, J., concur.

KEY WORDS: *R.C. 2929.14(C)(4), consecutive sentences, R.C. 2953.08, felony sentencing.*

The trial court's partial findings on the grounds for imposing consecutive sentences under R.C. 2929.14(C)(4) is contrary to law under R.C. 2953.08. The sentence is vacated and remanded for resentencing.

108072 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ABDUL S. AZEEN

Affirmed.

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

KEY WORDS: *Motion to dismiss indictment; negotiated plea.*

Where the trial court found appellee's plea to be a negotiated plea, it was not error for the trial court to grant appellee's motion to dismiss the indictment with prejudice after the victim's subsequent death.

108076 GARFIELD HTS. MUNI. C CRIMINAL MUNI. & CITY
CITY OF GARFIELD HEIGHTS v DAVID EDGE

Affirmed.

Sean C. Gallagher, J., Eileen T. Gallagher, P.J., and Raymond C. Headen, J., concur.

KEY WORDS: *Manifest weight; domestic abuse; speculation.*

The conviction for domestic abuse is not against the weight of the evidence because there is nothing inherently unreliable about the victim's testimony.

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108101 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KEITH WILKINS

108102 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KEITH WILKINS

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: *Consecutive sentence; felony; community-control sanctions; jail; prison; R.C. 2929.41(A); authority; GPS; home detention; jail-time credit.*

Trial court lacked statutory authority to order community-control sanctions and jail term imposed in one case consecutively to the prison term imposed in another case. Appellant was not entitled to jail-time credit for time served on GPS home detention.

108164 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE E.M.D.

Affirmed.

Larry A. Jones, Sr., P.J., Michelle J. Sheehan, J., and Raymond C. Headen, J., concur.

KEY WORDS: *Motion for finding of contempt; parenting time; visitation.*

The trial court's journal entry did not allow for overnight visitation with appellant on Wednesdays. Appellant's proper course of action would have been to file a motion to modify the trial court's order. There was no error where the trial court denied appellant's motion to find appellee in contempt.

108312 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE P.L.

Affirmed.

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

KEY WORDS: *Summary judgment; Civ.R. 56; paternity; Uniform Parentage Act; R.C. Chapter 3111; acknowledgement of paternity; genetic testing; R.C. 3111.25; R.C. 3111.26; R.C. 3111.27; rescission; R.C. 3111.28; fraud; procedural due process; legislative intent; R.C. 3111.04; standing.*

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(Case 108312 continued)

The trial court properly granted summary judgment in favor of defendants. Defendants complied with the applicable provisions under R.C. Chapter 3111 in filing their acknowledgment of paternity at the time of the child's birth. The acknowledgement of paternity had not been rescinded by defendants or modified in any way. As a result, defendants' acknowledgement of paternity became final and enforceable. Appellant's action to assert his parental rights and establish paternity, filed more than eight years after the child was born and the acknowledgment of paternity was filed by defendants, was untimely. The relief sought by appellant is not authorized under the current version of R.C. Chapter 3111. Accordingly, defendants were entitled to a judgment as a matter of law.

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| 108534 | COMMON PLEAS COURT | A | CRIMINAL C.P. |
| STATE OF OHIO v PAUL ROBINSON | | | |

AFFIRMED.

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

KEY WORDS: *Postconviction motion; hybrid sentence; jurisdiction; void sentence.*

Appellant's sentence is not a hybrid sentence and is therefore not a void sentence. The trial court did not err where it denied appellant's postconviction motion to vacate a void sentence. The trial court lacked jurisdiction to consider appellant's postconviction motion.