

## CASE DECISION LIST

October 31, 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.

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

**KEY WORDS:** *Presentence motion to withdraw no contest plea; maximum sentence for misdemeanor offense; jail-time credit.*

*Trial court did not abuse its discretion in denying defendant's presentence motion to withdraw his no contest plea where defendant was represented by competent counsel, given a full Crim.R. 11 hearing before he entered his plea, given a complete hearing on the motion to withdraw, and the record reflected that the court gave full and fair consideration to the plea withdrawal request; court did not abuse its discretion in imposing a maximum sentence for a first-degree misdemeanor because the principles and purposes of misdemeanor sentencing in R.C. 2929.21 and the misdemeanor sentencing factors in R.C. 2929.22(B) supported a maximum sentence; trial court did not err in not giving the defendant the full amount of jail-time credit requested because the time he spent in jail arose from facts that were separate and unrelated to this offense.*

**107950** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v SAMUEL ROBINSON

Affirmed.

Eileen T. Gallagher, J., and Mary Eileen Kilbane, A.J., concur; Michelle J. Sheehan, J., concurs in judgment only.

**KEY WORDS:** *Preindictment delay; dismiss; actual prejudice; speculation; denied; unavailable witness; DNA; rape; kidnapping; sufficient; manifest weight; evidence.*

*The trial court did not err by denying defendant's motion to dismiss due to preindictment delay because defendant failed to establish actual prejudice. Defendant's rape and kidnapping convictions are supported by sufficient evidence and are not against the manifest weight of the evidence.*

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**107974** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
BLUE DURHAM PROPERTIES v MARC K. KRANTZ, ET AL.

**108167** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
BLUE DURHAM PROPERTIES v MARC K. KRANTZ, ET AL.

Affirmed.

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

**KEY WORDS:** *Civ.R. 60(B); motion for relief from judgment; fraud upon the court; abuse of discretion; res judicata; untimely.*

*Because appellants' Civ.R. 60(B) motion for relief from judgment was based on facts that could have been raised in a prior motion or in a prior appeal, their third motion for relief from judgment is barred by res judicata. Where appellants filed their new motion alleging fraud upon the court approximately two years after judgment and offered no explanation for the delay in their motion, appellants' Civ.R. 60(B) motion is untimely. The trial court therefore did not abuse its discretion in denying appellants' motion for relief from judgment.*

**108026** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JOSEPH WRIGHT

Affirmed.

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

**KEY WORDS:** *Unlawful sexual conduct with a minor; DNA; hearsay; Confrontation Clause; medical diagnoses; treatment; investigatory; relevant; probative; joinder; sever; simple and direct; prejudice; prosecutorial misconduct; closing argument; venue; circumstantial evidence; harmless; reasonable doubt.*

*No prejudicial joinder where the evidence is presented in an orderly fashion as to the separate offenses or victims without significant overlap or conflation of proof. The trial court did not err by permitting a treating nurse and an investigating detective to testify about certain statements made by the victim. Statements elicited during questioning by medical personnel for the purposes of medical diagnoses and treatment are a clearly defined, long-standing exception to the rules of hearsay and, therefore, are not barred by the Confrontation Clause. Law-enforcement officers may testify to out-of-court statements for the nonhearsay purpose of explaining the next investigatory step. Brief references to the victim's allegations of sexual assault were relevant to the jury's determination of whether defendant committed the offense of unlawful sexual conduct with a minor. The state did not commit misconduct during its closing arguments such that Wright was deprived of a fair trial. The state presented sufficient circumstantial evidence to establish Cuyahoga County as the proper venue.*

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**108068** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DALE PETERS

Affirmed.

Mary J. Boyle, J., and Michelle J. Sheehan, J., concur; Mary Eileen Kilbane, A.J., dissents in part with separate opinion.

**KEY WORDS:** *Fines; R.C. 2929.19; indigent; plain error; R.C. 2929.14(C)(4).*

*The trial court did not commit plain error in imposing the fines as part of Peters's sentence. Peters's assignment of error contesting his consecutive sentences is moot because he was sentenced to life imprisonment without the possibility of parole for his conviction for aggravated murder, which he does not challenge on appeal. Even if his assignment of error contesting consecutive sentences was not moot, the trial court did not err because the record shows that the trial court made the requisite findings with respect to consecutive sentences at the sentencing hearing and incorporated those findings in its journal entry.*

**108099** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JEFFREY IRWIN

Affirmed.

Eileen A. Gallagher, J., Mary Eileen Kilbane, A.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *R.C. 2929.11; R.C. 2929.12; R.C. 2953.08; sentencing factors; felony sentencing.*

*A trial court must ensure a felony sentence falls within the applicable statutory range prescribed by the degree of the offense and it must consider the purposes of felony sentencing contained in R.C. 2929.11 and the applicable seriousness and recidivism factors outlined in R.C. 2929.12. A court complies with its statutory obligation where it imposes a felony sentence within the applicable range and confirms in a journal entry that it considered the required factors of the law and found prison consistent with the purposes of R.C. 2929.11.*

*A challenge to a sentence as being unsupported by the record fails to the extent that the defendant argues that the trial court should have considered and weighed the factors in R.C. 2929.11 and 2929.12 differently than it did.*

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**108189** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v TRAMAINE E. MARTIN

Affirmed.

Anita Laster Mays, J., Eileen T. Gallagher, P.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Warrantless search, R.C. 2953.21(H).*

*Carpenter v. United States, 585 U.S. \_\_\_\_\_, 138 S.Ct. 2206, 2221, 201 L.Ed.2d 507 (2018), does not retroactively apply in the appellant's case because Carpenter held that warrantless searches are typically unreasonable where a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing. However, the police in Martin's case did not use the location of the cell phone to discover evidence of criminal wrongdoing, but to locate him. Appellant's petition is untimely and, therefore, not entitled to findings of fact and conclusions of law.*

**108331** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v PATRICK A. MINIFEE

Affirmed.

Michelle J. Sheehan, J., Sean C. Gallagher, P.J., and Raymond C. Headen, J., concur.

**KEY WORDS:** *Guilty plea; "motion to vacate void plea"; competency hearing; res judicata.*

*Appellant's claim regarding the necessity of a competency hearing before his plea is barred by res judicata. Even if the claim were not barred, it lacks merit because the right to a competency hearing is constitutionally guaranteed only when the record contains sufficient indicia of incompetence and there is no indication of incompetence in the record.*

**108358** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE R.H., ET AL.

Affirmed.

Raymond C. Headen, J., Sean C. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Permanent custody; termination of parental rights; R.C. 2151.414; clear and convincing evidence; suitable relative; best interest of the child.*

*Award of permanent custody to the agency was supported by clear*

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**and convincing evidence. The court was not required to find that no suitable relative was available to take custody of the children, nor was there a suitable relative available.**

**108405** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE A.M.

Affirmed.

Anita Laster Mays, J., Mary J. Boyle, P.J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS: R.C. 2151.353(A)(4); permanent placement of dependent child; R.C. 2151.414(E)(1); parents unable to remedy removal conditions; R.C. 2151.414(D)(1); best interest of child.**

***The trial court's award of permanent custody to the social welfare agency is supported by sufficiently clear and convincing evidence and is not against the manifest weight. The appellant mother was unable to resolve issues of ongoing drug abuse and mental health concerns that caused the child's removal from the home. Multiple reunification attempts were unsuccessful, and the preschool-aged child exhibits negative emotional patterns as a result. The trial court did not abuse its discretion in determining that permanent custody is in the best interest of the child.***

**108406** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE J.S.

Affirmed.

Sean C. Gallagher, P.J., Michelle J. Sheehan, J., and Raymond C. Headen, J., concur.

**KEY WORDS: Permanent custody; R.C. 2151.414; best interest; bonded; mother; grandmother; legal custody; weigh; relevant factors.**

***Affirmed the trial court's decision granting permanent custody of the child to the children services agency. Although the child was bonded with her mother and her maternal grandmother and she had expressed her wishes to the court, R.C. 2151.414 requires a weighing of all the relevant factors to determine the best interest of the child. A good relationship is not controlling in and of itself, and the availability of a legally secure placement is not an all-controlling factor. The trial court properly considered all of the relevant statutory factors, and its determination that permanent custody is in the child's best interest is supported by competent, credible evidence in the record.***

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**108498** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v SAMUEL REED, JR.

Vacated and remanded.

Mary J. Boyle, J., Mary Eileen Kilbane, A.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Postconviction relief, void sentence, Crim.R. 43(A), allied offenses, postrelease control, R.C. 2929.03(A).*

*The trial court erred in imposing sentences for counts that were merged with other counts and not allowing the state to elect on which counts it wished to sentence on. The defendant's sentences for Counts 2, 3, 4, 5, 7, and 8 are void and vacated and remanded for resentencing, at which the state is to elect which charges it wishes to have the defendant sentenced on. Additionally, the trial court failed to notify the defendant of the consequences of violating postrelease control, and its "25 years to life" sentence for aggravated murder was void because it failed to comport with R.C. 2929.03(A)'s language.*

**108777** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MICHAEL G. BARRON

Vacated and remanded.

Sean C. Gallagher, J., Eileen T. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Conceded error; jurisdiction; scope of remand.*

*The trial court lacked jurisdiction to resentence the defendant to a nine-month term of imprisonment in contradiction to a previous remand ordering the trial court to impose a 90-day term of imprisonment.*