

## CASE DECISION LIST

September 26, 2019

**106894** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v BOBBY NIX, II

Reversed and remanded.

Eileen A. Gallagher, J., Anita Laster Mays, P.J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Crim.R. 11(C); R.C. 2929.141(A)(1); maximum penalty; violation of postrelease control; consecutive sentence; substantial compliance; partial compliance; failure to comply.*

*Appellant's plea was entered less than knowingly, intelligently, and voluntarily where the trial court's advisement of the maximum penalties appellant faced included a potential prison sentence for a violation of postrelease control, but not the mandatory, consecutive nature of that sentence should it be imposed. The trial court's advisement constituted a complete failure.*

**107527** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JOHN KIRK

**107553** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v FRANK MORRIS

Reversed and remanded.

Mary Eileen Kilbane, A.J., and Anita Laster Mays, J., concur; Larry A. Jones, Sr., J., dissents (with separate opinion attached).

**KEY WORDS:** *Jury selection; peremptory challenge; Batson; race-neutral reason; pattern; body posture. Judgment reversed and remanded.*

*The state exercised seven peremptory challenges. Four out of seven challenges were exercised on African-American jurors. The state's use of peremptory challenges in the instant case exhibited a pattern against African-American jurors, especially in light of its "race-neutral reason" with regard to prospective juror No. 4. The state explained that this juror was dishonest because he stated he was an engineer when "he was really a maintenance man" and had his "body angled" in a certain way.*

## CASE DECISION LIST

**107750** COMMON PLEAS COURT F CIVIL C.P.-JUV, DOM, PROBATE  
MONIQUE L. ALLEN-STORY v JIMMY LEE STORY

Affirmed.

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

**KEY WORDS:** *Service of process; entry of appearance; waiver; discovery; fraud on the court; motion for relief from judgment; weight of the evidence; failure to file transcripts; presume regularity; App.R. 12(A)(2).*

*Domestic relations court judgment entry granting divorce is affirmed. Appellant was properly served, and, in the alternative, appellant waived jurisdictional issues by entering an appearance and participating in proceedings. The court did not abuse its discretion in issuing pretrial orders regarding discovery. Appellant failed to show that he was entitled to relief from judgment for fraud on the court. Appellant failed to file transcripts, which requires this court to presume regularity in the proceedings below.*

**107821** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MARVIN HAWKINS

Reversed and remanded.

Michelle J. Sheehan, J., Eileen T. Gallagher, P.J., Mary J. Boyle, J., concur.

**KEY WORDS:** *Criminal statute of limitations; commencement of a prosecution; due diligence to execute process on an indictment; purposely avoiding prosecution; ineffective assistance of counsel.*

*Appellant's conviction is reversed, and the matter is remanded because his trial counsel provided ineffective assistance in failing to file a motion to dismiss the indictment on grounds of the state's failure to commence the criminal action in compliance with R.C. 2901.13.*

**107943** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV, DOM OR PRO  
BERNS CUSTOM HOMES, INC. v RICHARD G. JOHNSON

Affirmed.

Eileen A. Gallagher, J., Mary J. Boyle, P.J., and Patricia Ann Blackmon, J., concur.

**KEY WORDS:** *R.C. 2716.01(A); Civ.R. 24; garnishment of personal earnings; intervention; judgment creditor.*

*A trial court does not abuse its discretion by denying a motion to*

## CASE DECISION LIST

(Case 107943 continued)

**intervene in a garnishment action where the party seeking intervention fails to articulate an interest in the defendant's personal earnings pursuant to R.C. Chapter 2716.**

**108062** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JAMESENA FINLEY

Affirmed.

Frank D. Celebrezze, Jr., J., and Sean C. Gallagher, P.J., concur; Patricia Ann Blackmon, J., dissents in part with separate opinion.

**KEY WORDS:** *Sufficiency; manifest weight; felonious assault; R.C. 2903.11(A)(1); R.C. 2903.11(A)(2); serious physical harm; deadly weapon; possessing criminal tools; R.C. 2923.24(A); ineffective assistance of counsel.*

*Appellant's convictions for felonious assault and possessing criminal tools were not based on insufficient evidence and are not against the manifest weight of the evidence. The state presented sufficient evidence of serious physical harm and a deadly weapon where the victim suffered a significant loss of blood, sought medical treatment and received butterfly stitches, and was injured as a result of appellant's swing at the victim's head and neck area with a "shiny silver object." Appellant was not denied the effective assistance of counsel.*

**108176** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ADRIANA CORRAO v IAN BENNETT

Affirmed in part, reversed in part, and remanded.

Sean C. Gallagher, P.J., Patricia Ann Blackmon, J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Default judgment; timely; appeal; motion to vacate; Civ.R. 60(B); Civ.R. 4.4(A)(1); R.C. 2703.14(L); service; publication; reasonable diligence; inference; concealment; rebut; jurisdiction; abuse of discretion.*

*Affirmed in part the decision of the trial court that denied defendant-appellant's motion to vacate the default judgment, but reversed the damages award and remanded the matter for a hearing to determine the proper amount of damages. Service by publication was proper where appellant failed to present sufficient independent evidence to contradict the plaintiff-appellee's exercise of reasonable diligence in ascertaining appellant's address or to rebut the inference of concealment.*

## CASE DECISION LIST

**108229** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ANDREW HIDVEGI

**108928** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ANDREW HIDVEGI

Vacated and remanded.

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

**KEY WORDS:** *Drug trafficking, sentence, contrary to law, R.C. 2929.14(A)(5), nunc pro tunc.*

*The trial court erred when it imposed a six-year sentence for drug trafficking at the sentencing hearing, but imposed a different sentence in its journal entry. The defendant's six-year sentence for drug trafficking, a felony of the fifth degree, is contrary to law because the trial court was only permitted to impose a sentence of 6 to 12 months. Thus, the defendant's sentence for drug trafficking is vacated and remanded for resentencing. Additionally, the trial court sentenced the defendant to two years for burglary at the sentencing hearing, but imposed a six-year sentence in its journal entry. This error, however, can be corrected through a nunc pro tunc entry to reflect that the defendant was sentenced to two years for his burglary conviction. Finally, the matter is also remanded for the trial court to correct its October 31, 2018, and November 6, 2018 journal entries to reflect that Count 2 for escape was dismissed.*

**108477** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ANTONIO VINTSON

Reversed in part; sentence modified.

Michelle J. Sheehan, J., Patricia Ann Blackmon, P.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Conceded error; allied offenses; R.C. 2941.25(A); vacate sentence.*

*The trial court erred when it imposed sentence on an allied offense of similar import where the parties agreed the offense should have merged and the state advised the court under which count it elected to proceed upon sentencing.*