

CASE DECISION LIST

December 10, 2020

108907 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ELVIN MALDONADO

Affirmed in part, reversed in part, and remanded.

Anita Laster Mays, P.J.; Larry A. Jones, Sr., J., concurs; Mary Eileen Kilbane, J., concurs in part and dissents in part with separate opinion.

KEY WORDS: *R.C. 2941.146; discharging firearm from a motor vehicle; R.C. 2923.162; discharging a weapon over prohibited premises; conceded error; felonious assault; five-year firearm specification (discharge firearm from motor vehicle); aggravated assault instruction; inconsistent verdicts; Sierah's Law; Violent Offender Database Registry; ineffective assistance of counsel.*

The state conceded that the R.C. 2941.146 five-year firearm specification for discharging a firearm from a motor vehicle is not applicable to a charge of discharge of a firearm over prohibited premises in violation of R.C. 2923.162; conviction for discharge of a weapon over prohibited premises was supported by sufficient evidence and was not against the manifest weight of the evidence; acquittals on one-and three-year firearm specifications were not fatally inconsistent with convictions for felonious assault with five-year firearm specification and conviction for discharge of firearm over prohibited premises; instruction on lesser offense of aggravated assault was erroneously denied; the state conceded that Sierah's Law was inapplicable because defendant was not convicted of a qualifying offense; claim of ineffective assistance of counsel was not well taken.

109032 GARFIELD HTS. MUNI. C CRIMINAL MUNI. & CITY
VILLAGE OF WALTON HILLS v KENNETH OLESINSKI

Reversed and remanded.

Eileen T. Gallagher, A.J., and Kathleen Ann Keough, J., concur; Sean C. Gallagher, J., concurs with separate attached opinion.

KEY WORDS: *Constitutional; vague; forfeit; plain error; community control; condition; modify; jurisdiction; violation; suspended; jail; hearing.*

Defendant forfeited his right to challenge the constitutionality of an ordinance by failing to preserve the issue below. The trial court lacked jurisdiction to alter the final sentence without determining that the offender violated the terms of community control as imposed in the final sentencing entry.

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109188 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ANTHONY LEMONS v STATE OF OHIO

Affirmed.

Mary J. Boyle, P.J., and Raymond C. Headen, J., concur; Frank D. Celebrezze, Jr., J., dissents with separate opinion.

KEY WORDS: *R.C. 2743.48(A)(5); wrongfully imprisoned individual; error in procedure; Brady violation; H.B. 411; retroactivity.*

The trial court's decision finding that (1) amended R.C. 2743.48(A)(5) applied retroactively to the claimant's case, (2) a Brady violation occurred, and (3) the claimant was a wrongfully imprisoned individual was affirmed.

109196 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DESHAWN MAINES

Affirmed.

Eileen A. Gallagher, J., and Sean C. Gallagher, P.J., concur; Patricia Ann Blackmon, J., concurs in judgment only with separate opinion.

KEY WORDS: *Felony sentencing; R.C. 2953.08(G)(2); contrary to law; purposes and principles of sentencing; R.C. 2929.11; sentencing factors; R.C. 2929.12; mental illness; sentence clearly and convincingly not supported by the record.*

Defendant's sentence was not contrary to law. Trial court complied with its obligations under R.C. 2929.11 and 2929.12 to consider the principles and purposes of sentencing and relevant sentencing factors when sentencing defendant. Trial court expressly stated in its sentencing journal entry that it had "considered all required factors of the law" and "finds that prison is consistent with the purpose of R.C. 2929.11." Further, although it was not required to do so, trial court explained its rationale for imposing a prison sentence at the sentencing hearing.

Defendant did not show that the record clearly and convincingly did not support trial court's imposition of a six-year prison sentence. Although defendant's mental illness was one relevant factor to be considered in determining an appropriate sentence, there were others the trial court was required to consider as well, including, the economic and emotional harm sustained by the victims, the fact that defendant committed the offense while on postrelease control, defendant's lengthy history of similar criminal offenses and defendant's unfavorable response to sanctions imposed for prior offenses. Given the nature of defendant's conduct, the extent of his criminal history and the high risk of recidivism, defendant's six-year prison sentence was not clearly and convincingly unsupported by the record.

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109298 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
PAPA'S HOMES, LLC v MAPLE PARK TERRACE CONDOMINIUM ASSOCIATION, INC.

Affirmed.

Sean C. Gallagher, J., Mary J. Boyle, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *R.C. Chapter 5311; condominium association; Civ.R. 56; summary judgment.*

The trial court did not err in granting summary judgment in favor of the condominium association and against the unit owner for damage caused to the interior ceiling and flooring of the unit because under the unambiguous terms of the applicable contract, the unit owner is responsible for all costs to repair internal installations, fixtures, windows, and doors, along with all associated structures, and is also responsible for the cost to repair all portions of the unit, which expressly includes the floors and ceiling of the unit.

109304 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
LU JORDAN v GIANT EAGLE SUPERMARKET, ET AL.

Affirmed.

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

KEY WORDS: *Motion for judgment on the pleadings; Civ.R. 12; Civ.R. 8; Civ.R. 10; pro se litigant; false imprisonment; confinement; force; threat of force; breach of contract; constitutional deprivation; state actor; discrimination.*

Appellant failed to plead actionable claims for false imprisonment, breach of contract, deprivation of constitutional rights, or discrimination. Accordingly, the trial court did not err in granting appellees' motion for judgment on the pleadings.

109342 BEDFORD MUNI. C CRIMINAL MUNI. & CITY
VILLAGE OF CHAGRIN FALLS v JUSTIN PTAK

Affirmed.

Mary J. Boyle, P.J., Anita Laster Mays, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *R.C. 2903.211(A)(1); menacing by stalking; R.C. 2903.211(D)(2); mental distress; sufficiency of the evidence; manifest weight of the evidence; Evid.R. 901; authentication of cell*

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phone records; Evid.R. 801; hearsay; Evid.R. 803(8)(a); public records exception to the hearsay rule; police LEADS reports; ineffective assistance of counsel; prosecutorial misconduct.

The defendant's conviction for menacing by stalking was supported by sufficient evidence, and the jury's verdict was not against the manifest weight of the evidence where the evidence showed that the defendant excessively contacted his ex-girlfriend for over three years, she contacted the police four times, she sent him a cease-and-desist letter via certified mail, he found out where she lived and left a love letter and roses on her car, she traded cars with her mother because she feared he would follow her, and he did follow her by car after the charges were processed against him and a no-contact order was in place. The prosecution properly authenticated the defendant's phone records. A police LEADS report and an officer's testimony about it were properly admitted through the public records exception to the hearsay rule. The prosecutor's comments in closing argument did not rise to the level of prosecutorial misconduct.

109554 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE R.C.S.L-K.

Reversed and remanded.

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

KEY WORDS: *Parentage; incarceration; motion to dismiss; subject-matter jurisdiction; abuse of discretion; magistrate; R.C. 3111.06(A); 3111.02; 2151.23(F)(1); 3127.15(A)(1)(C); 3127.01(7).*

Pro se appellant appeals the decision of the trial court to adopt the magistrate's decision granting a motion to dismiss. The magistrate found that a lack of subject-matter jurisdiction meant that the action could not go forward. Magistrate also took judicial notice of the appellant's incarceration until April 2022. We found that the trial court erred in adopting the decision because the court did have subject-matter jurisdiction. Further, while the appellant's incarceration may make it difficult for him to pursue an action for parentage it does not prevent him from filing a complaint.

109646 PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE GUARDIANSHIP OF JUDITH A. LIEBER

Affirmed.

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

KEY WORDS: *Probate court; guardianship; death of ward; dismissal for lack of jurisdiction; de novo review.*

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(Case 109646 continued)

The probate court did not err by dismissing the guardian's application to settle claim for lack of jurisdiction.

109649 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE V.P., ET AL.

Affirmed.

Kathleen Ann Keough, J., Mary J. Boyle, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Legal custody; best interest; case plan; reasonable efforts.*

The trial court did not abuse its discretion in awarding legal custody to maternal aunt because it was in the children's best interest. Although mother completed programs and services in her case plan, the record demonstrated that she did not remedy the conditions causing the removal of her children. Mother's contention that the agency did not make reasonable efforts for reunification was unsupported by the record.

109737 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
C.S.J. v S.E.J

Affirmed.

Anita Laster Mays, J., and Michelle J. Sheehan, J., concur; Mary J. Boyle, P.J., concurs in judgment only.

KEY WORDS: *Jurisdiction pending appeal, order for costs.*

The trial court retained jurisdiction to act in aid of execution of the trial court's order that the parties equally bear the cost of parental visitation management fees.