

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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January 30, 2020

107713 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
LINDA ECONOMUS, ET AL. v CITY OF INDEPENDENCE, ET AL.

Affirmed in part, reversed in part, and remanded.

Sean C. Gallagher, J., and Michelle J. Sheehan, J., concur; Mary J. Boyle, P.J., concurs in part and dissents in part with separate opinion.

KEY WORDS: *Summary judgment; immunity; negligence; storm sewer system; duty; maintain; R.C. 2744.01(G)(2)(d); R.C. 2744.02(B)(2); R.C. 2744.03(A)(5); discretionary; creek; retention basin; pipe; right of way; sediment; drainage ditch easement; purchase agreement; hold harmless; indemnify; city; third-party beneficiary; R.C. 2744.03(A)(6)(b); employee; reckless; bad faith; punitive damages; attorney fees; R.C. 2744.05(A).*

Reversed the trial court's decision to grant summary judgment in favor of the city upon finding there are genuine issues of material fact concerning whether the storm sewer-drainage ditch easement area in the subdivision and/or the retention basin on plaintiffs' property are part of the city's storm sewer system and, if so, as to whether the city exercised ordinary care in maintaining and repairing the storm sewer system. Affirmed the trial court's decision to grant summary judgment in favor of city engineer on plaintiffs' claim of individual liability upon finding he is entitled to immunity under R.C. 2744.03(A)(6)(b). Affirmed the denial of the claim for punitive damages and attorney fees.

107868 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ROBERT BATES

Affirmed.

Frank D. Celebrezze, Jr., J., Mary J. Boyle, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Postrelease control; R.C. 2967.28; void sentence.*

The trial court did not err in correcting the postrelease control sanction. The trial court failed to properly impose postrelease control at the original sentencing hearing, rendering the postrelease control sanction void. Appellant had not completed his prison sentence, and as a result, the trial court was permitted to correct the postrelease control sanction.

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108138 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JAMES CRAWFORD

Affirmed.

Frank D. Celebrezze, Jr., J., Sean C. Gallagher, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Drug possession; motion to suppress; investigatory stop; Terry stop; reasonable suspicion; plain view.*

The trial court did not err in denying appellant's motion to suppress. Based on the totality of the circumstances, the arresting officer had a reasonable and articulable suspicion to initiate the investigatory Terry stop, search appellant's vehicle, and conduct the pat-down search of appellant's person.

108275 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v FRANKLYN WILLIAMS

Affirmed.

Larry A. Jones, Sr., J., Sean C. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *R.C. 2945.71(C)(2)/speedy trial; vindictive sentence; sufficiency; Crim.R. 29/motion for acquittal; Crim.R. 8(A)/joinder; manifest weight.*

A case overturned on appeal does not restart the time for calculating speedy trial time; appellant's actions and filing of numerous motions is attributed to almost all of the continuances in this case. There was no constitutional violation of appellant's speedy trial rights.

The trial court issued a comprehensive journal entry that detailed the sources the trial court used to determine an adequate and appropriate sentence, including material that was not available to the trial court that originally sentenced appellant. The totality of the trial court record does not reveal any vindictiveness to appellant by the sentencing judge.

Witness testimony, physical evidence, possession of the victim's property, and appellant's apology to one of the victims outside of the courtroom was sufficient enough evidence to sustain appellant's convictions.

Appellant failed to show that he was prejudiced by joining the offenses for trial.

Appellant's trial counsel questioned the witness regarding inconsistencies about appellant's complexion and the type of vehicle driven by appellant. The jury was in the best position to determine the witness's credibility. Appellant's convictions were not against the manifest weight of the evidence.

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108304	COMMON PLEAS COURT STATE OF OHIO v CHARLES C. MCCALL	A	CRIMINAL C.P.
108306	COMMON PLEAS COURT STATE OF OHIO v CHARLES C. MCCALL	A	CRIMINAL C.P.
108307	COMMON PLEAS COURT STATE OF OHIO v KELLY L. MCCALL	A	CRIMINAL C.P.

Affirmed.

Kathleen Ann Keough, P.J., Michelle J. Sheehan, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Guilty plea; agreed-upon sentence; ineffective assistance of counsel; community control; condition; alcohol.*

Trial court's sentence was not contrary to law and was supported by the record, even though the trial court imposed a longer sentence than the agreed-upon recommended sentence by the parties; defendant was not denied effective assistance of counsel where he failed to demonstrate a reasonable probability that but for counsel's errors, he would not have pleaded guilty; condition of community control that defendant not work in any location where alcohol is served was not overbroad or unreasonable.

108369	LAKWOOD MUNI. CITY OF LAKEWOOD v ALEXANDER P. SMYCZEK	C	CRIMINAL MUNI. & CITY
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Dismissed.

Mary Eileen Kilbane, J., Eileen A. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Moot; collateral consequences; collateral disability; probation violation; voluntary sentence; real and significant consequences; ineffective assistance of counsel.*

Defendant challenged the effectiveness of counsel during his probation violation hearing where the trial court judge found he had indeed violated the terms of his community control. Before reaching that issue, his appeal was found to be moot because he had already served his sentence and appellant did not offer, nor did the record show, any collateral disability he had incurred as a result of his sentence.

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108483 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ALBERT SPANN

Affirmed.

Frank D. Celebrezze, Jr., J., Sean C. Gallagher, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Motion to withdraw guilty plea; Crim.R. 32.1; res judicata; R.C. 2945.06; Crim.R. 11(C)(3).*

Appellant pled guilty to an amended indictment that did not include a death penalty specification. R.C. 2945.06 was therefore not applicable, and the single judge had jurisdiction to accept appellant's guilty plea. As a result, the trial court did not abuse its discretion in denying appellant's motion to withdraw his guilty plea.