

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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July 16, 2020

**108727** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v EDWARD A. SMITH

Affirmed.

Michelle J. Sheehan, J., Anita Laster Mays, P.J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Guilty plea; motion to withdraw; res judicata.*

**Appellant's claim that his understanding regarding his parole eligibility rendered his plea unknowing or unintelligent should have been raised in his prior motion to withdraw the guilty plea and is therefore barred by res judicata.**

**108779** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v PETAR NIKOLIC

Affirmed.

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

**KEY WORDS:** *Waiver; disqualify; counsel; invalid plea; reasonable probability; mandatory deportation; advisement; deficient; prejudice.*

**Defendant's guilty plea waives all appealable errors unless the errors precluded him from entering a knowing, voluntary, and intelligent plea. Defendant's challenge to the trial court's implicit denial of his motion to disqualify counsel was waived and the defendant did not demonstrate the existence of a reasonable probability that he would not have pleaded guilty or that he did not enter a knowing, voluntary, or intelligent plea based on the court's denial of his motion. Trial counsel was deficient in failing to advise defendant about mandatory deportation, but defendant failed to demonstrate how he was prejudiced by the deficient performance.**

**108832** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v RICHARD BARROW

Affirmed.

Kathleen Ann Keough, J., Eileen T. Gallagher, A.J., and Patricia Ann Blackmon, J., concur.

**KEY WORDS:** *Postconviction; successive; untimely; jurisdiction; R.C. 2953.23; due process; actual innocence; constitutional claim;*

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(Case 108832 continued)

unavoidably prevented.

**Trial court did not abuse its discretion in denying defendant's successive and untimely petition for postconviction relief because the trial court lacked subject matter jurisdiction when defendant did not meet the jurisdictional requirements of R.C. 2953.23 by failing to (1) demonstrate that he was unavoidably prevented from discovering the alleged new evidence, and (2) raise a constitutional claim. The claim of actual innocence is not a cognizable constitutional claim to raise in a petition for postconviction relief.**

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| <b>108885</b>                  | COMMON PLEAS COURT | A | CRIMINAL C.P. |
| STATE OF OHIO v ANTHONY CONNER |                    |   |               |

Dismissed.

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

***KEY WORDS: Postconviction DNA testing; R.C. 2953.73; reasons; jurisdiction; final appealable order; dismissed.***

***Where the trial court's order denying the appellant's postconviction application for DNA testing failed to provide reasons for the denial, the trial court's order is not a final appealable order, and we therefore lack jurisdiction for review.***

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| <b>108941</b>              | COMMON PLEAS COURT | A | CRIMINAL C.P. |
| STATE OF OHIO v CYRUS TATE |                    |   |               |

Affirmed.

Larry A. Jones, Sr., J., and Anita Laster Mays, P.J., concur; Frank D. Celebrezze, Jr., J., concurs with separate opinion.

***KEY WORDS: Crim.R. 29/motion for acquittal; R.C. 2911.12(A)(3)/burglary; 2909.05(F)(2)/vandalism; sufficiency; manifest weight; R.C. 2941.25(B)/allied offenses; plain error.***

***Although the second-degree charge of burglary against appellant was dismissed, there remained sufficient evidence to find appellant guilty of the lesser-degree charge of burglary; there was also sufficient evidence to find appellant guilty of vandalism. Appellant's conviction was not against the manifest weight of the evidence.***

***Appellant's acts of burglary and vandalism were separate acts. The trial court did not err where appellant's offenses were not merged as allied offenses.***

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**108944** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v KAINOA JACINTO

Affirmed.

Eileen A. Gallagher, J., and Anita Laster Mays, P.J., concur; Larry A. Jones, Sr., J., dissents with separate opinion.

**KEY WORDS:** *Felonious assault; R.C. 2903.11(A)(1); self-defense; R.C. 2901.05; nondeadly force; self-defense jury instruction; recording of 911 call; Confrontation Clause; hearsay; Evid.R. 803(1); present sense impression; Evid.R. 803(2); excited utterance; opinion testimony; Evid.R. 701; Evid.R. 702; expert report; Crim.R. 16(K); Crim.R. 52(A); harmless error; single punch; knowingly; sufficiency of the evidence; manifest weight of the evidence; principles and purposes of sentencing; R.C. 2929.11; sentencing factors; R.C. 2929.12.*

*Trial court did not err in denying defendant's request for a self-defense jury instruction where there was no evidence from which a jury might reasonably conclude that defendant had a bona fide belief that he was in imminent danger of bodily harm prior to striking victim. Trial court did not err in admitting recording of 911 call. 911 call was nontestimonial and caller's statements were admissible under excited utterance or present sense impression exceptions to the hearsay rule. Improper admission of opinion testimony by paramedic was harmless error where paramedic's testimony was duplicative of other, properly admitted expert testimony and the state presented ample evidence besides paramedic's testimony establishing defendant's guilt beyond a reasonable doubt. Evidence was sufficient to support conviction for felonious assault and conviction was not against the manifest weight of the evidence. Although defendant may not have reasonably anticipated that victim would sustain a serious brain injury from defendant punching victim, it could be reasonably inferred that defendant knew that some form of serious physical harm to victim was a reasonable and probable consequence of defendant's forceful punch to victim's jaw. Trial court considered the principles and purposes of sentencing under R.C. 2929.11 and the relevant sentencing factors under R.C. 2929.12 in imposing prison sentence. Sentence was not clearly and convincingly unsupported by the record.*

**108968** BEREA MUNI. G CIVIL MUNI. & CITY  
REALTY TRUST SERVICES, LLC v RASHID MOHAMMAD, ET AL.

Affirmed.

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

**KEY WORDS:** *Forcible entry and detainer; contract; offer;*

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(Case 108968 continued)

**acceptance; meeting of the minds; material terms; price; holdover tenant.**

**Trial court properly granted forcible entry and detainer judgment in favor of landlord where lease expired and no new lease was executed. Tenant was not a holdover tenant just because he remained in the premises after the lease expired since landlord did not accept rent payments after lease expired.**

**108973** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MARTIN L. GOODSON

Dismissed.

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

**KEY WORDS: Motion to suppress; jurisdiction; final, appealable order; blanket sentence.**

**The trial court erred where it did not impose a sentence separately for each conviction. No final, appealable order exists, and this court lacks jurisdiction in this appeal.**

**109027** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
GRACE W. ZHONG v NELSON LIANG, ET AL.

Dismissed.

Mary J. Boyle, P.J., Patricia Ann Blackmon, J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS: Final appealable order; R.C. 2505.02(B)(2); Civ.R. 54(B); consolidated cases.**

**The trial court's judgment awarding sanctions to Liang is not a final appealable order because the consolidated case has a pending motion for prejudgment interest.**

**109029** CLEVELAND MUNI. C CRIMINAL MUNI. & CITY  
CITY OF CLEVELAND v TOMMISHA PINNER

Reversed and remanded.

Larry A. Jones, Sr., J., Mary J. Boyle, P.J., and Patricia Ann Blackmon, J., concur.

**KEY WORDS: Sua sponte dismissal; abuse of discretion.**

**Although subpoenas had not been issued to witnesses involved in**

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(Case 109029 continued)

**the accident, the officer that issued the citation was present for trial. It was an abuse of discretion where the trial court sua sponte dismissed the case prior to trial.**

**109178** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v TERRANCE MITCHELL

Affirmed.

Eileen A. Gallagher, J., Eileen T. Gallagher, A.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS: *Crim.R. 32.1; motion to withdraw guilty plea; jurisdiction; abuse of discretion.***

***Because a trial court does not have jurisdiction to consider a defendant's Crim.R. 32.1 motion to withdraw a guilty plea after a court of appeals has affirmed the defendant's convictions, the trial court does not abuse its discretion denying such a motion.***

**109194** LAKEWOOD MUNI. C CRIMINAL MUNI. & CITY  
CITY OF LAKEWOOD v NICOLE C. MITCHELL

Affirmed.

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

**KEY WORDS: *Lakewood Codified Ordinances 331.34(c); full time and attention; sufficiency; manifest weight of the evidence.***

***The defendant's conviction for violating Lakewood Codified Ordinances 331.34(c) is affirmed because there is some evidence that her distracted driving was erratic and caused confusion to other motorists, and therefore, the conviction is not based on insufficient evidence or is not against the weight of the evidence based on the conflicting testimony presented at trial.***

**109242** GARFIELD HTS. MUNI. C CRIMINAL MUNI. & CITY  
CITY OF GARFIELD HEIGHTS v ANTHONY V. SALVATORE

Dismissed.

Mary Eileen Kilbane, J., Eileen T. Gallagher, A.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS: *Moot, collateral disability, voluntary completion, minor misdemeanor, fines.***

(Case 109242 continued)

**The defendant-appellant appealed his conviction for a minor misdemeanor. We found that this appeal was moot because the appellant had: 1) voluntarily paid his fine, 2) not requested a stay of execution either with this court or the trial court, and 3) did not demonstrate that he suffered any collateral disability as the result of his conviction. As a result, we dismiss the appeal as moot.**

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| <b>109413</b>                  | COMMON PLEAS COURT | A | CRIMINAL C.P. |
| STATE OF OHIO v JOSEPH VODICKA |                    |   |               |

Reversed and remanded.

Patricia Ann Blackmon, P.J., Frank D. Celebrezze, Jr., J., and Mary Eileen Kilbane, J., concur.

***KEY WORDS: Conceded error; postrelease control; nunc pro tunc correction.***

***Where the trial court informed defendant during sentencing in later cases that postrelease control from earlier cases would be terminated, but journal entries failed to reflect termination of postrelease control, and state conceded error, the case remanded for nunc pro tunc correction of entries.***