

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 9

March 12, 2020

107299 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEMETRIAS T. VINSON

Affirmed.

Patricia Ann Blackmon, J.; Sean C. Gallagher, J., concurs; Mary Eileen Kilbane, P.J., dissents with separate opinion.

KEY WORDS: *R.C. 2929.14(C)(4); consecutive sentence findings.*

The trial court properly imposed consecutive sentences under R.C. 2929.14(C), and the record supports the sentencing court's findings in support of consecutive findings under R.C. 2929.14(C)(4).

107972 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v YOHANN PALMER-TESEMA

Affirmed.

Kathleen Ann Keough, J., and Frank D. Celebrezze, Jr., P.J., concur; Eileen A. Gallagher, J., dissents with separate opinion.

KEY WORDS: *Joinder; prejudicial; Crim.R. 14; rape; jury instruction; sleep; voluntary intoxication; substantial impairment; Crim.R. 7(D); amendment; indictment.*

Trial court did not abuse its discretion in denying defendant's Crim.R. 14 relief from prejudicial joinder because the evidence of each rape and kidnapping charge was simple and direct. The evidence supported both a voluntary intoxication and sleep instruction for the purposes of substantial impairment. The trial court did not err in permitting the state to amend the indictment during trial by changing the method of rape because it did not change the name or identity of the offense.

108196 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LISA M. SABOVICH

Affirmed.

Eileen A. Gallagher, J., Eileen T. Gallagher, A.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Crim.R. 32.1; withdrawal of guilty plea; abuse of discretion; manifest injustice.*

The trial court does not abuse its discretion by denying a

CASE DECISION LIST

(Case 108196 continued)

postsentence motion to withdraw a guilty plea where the defendant fails to show manifest injustice. A defendant does not establish manifest injustice by asserting claims not supported by evidence in the record.

108200 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v BRYANT D. TAYLOR

Dismissed.

Patricia Ann Blackmon, J., Eileen T. Gallagher, A.J., and Raymond C. Headen, J., concur.

KEY WORDS: Anders brief.

Case is dismissed because the potential assigned error is not meritorious.

108317 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DOMINIC HAGAR

Affirmed.

Patricia Ann Blackmon, P.J., Frank D. Celebrezze, Jr., J., and Eileen A. Gallagher, J., concur.

KEY WORDS: Competency to stand trial; guilty plea; ineffective assistance of counsel; felony sentencing; cumulative errors.

There was no evidence in the record that the defendant was incompetent to stand trial. The defendant's guilty plea was made knowingly, voluntarily, and intelligently. Counsel was not ineffective in failing to consider the defendant's competency, because no evidence supports the defendant's claim that he is incompetent. The defendant's sentence is not contrary to law.

108336 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v GARY J. ZIGA

Affirmed.

Frank D. Celebrezze, Jr., J., Sean C. Gallagher, P.J., and Raymond C. Headen, J., concur.

KEY WORDS: Ineffective assistance of counsel; competency; rape; gross sexual imposition; kidnapping; sufficiency; R.C. 2907.02, penetration; sexual conduct; R.C. 2907.01; manifest weight.

Appellant was not denied his constitutional right to the effective assistance of counsel. Appellant's convictions were supported by

CASE DECISION LIST

(Case 108336 continued)

sufficient evidence and are not against the manifest weight of the evidence.

108341 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v NATHANIEL PRIMOUS IV

Affirmed in part; reversed in part.

Kathleen Ann Keough, P.J., and Michelle J. Sheehan, J., concur; Mary Eileen Kilbane, J., concurs in judgment only.

KEY WORDS: *Text messages; authentication; sufficiency and manifest weight of the evidence; aggravated burglary; aggravated menacing; telecommunications harassment; child endangering.*

Defendant's convictions for aggravated burglary, aggravated menacing, and telecommunications harassment were supported by sufficient evidence and not against the manifest weight of the evidence because the defendant trespassed into the home of his estranged wife, the victim, and assaulted her with a handgun; he later sent threatening text messages to the victim. The text messages were properly authenticated by the victim because she was the recipient of the messages. The defendant's convictions for child endangering were not supported by sufficient evidence because although he was the children's stepfather, this relationship alone, without any evidence that he provided care, maintenance, or support for the children, does not establish the relationship or role needed to be found guilty of child endangering.

108346 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
PATRICIA SILBERHORN v FLEMCO, LLC

Affirmed.

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

KEY WORDS: *Summary judgment; declaratory judgment; quiet title; slander of title; breach of contract.*

Silberhorn entered a contract with A Christmas Story House Foundation, Inc. and Flemco, L.L.C. under which Flemco would perform construction work on Silberhorn's property, to be paid for by the Foundation. A dispute arose between Flemco and Silberhorn regarding the construction, and Flemco recorded a mechanic's lien against the property. Flemco did not properly serve Silberhorn with the mechanic's lien, rendering it invalid and a cloud upon Silberhorn's title. Silberhorn was entitled to damages for slander of title. Silberhorn was not liable for breach of contract because only the Foundation agreed to pay Flemco for work performed, not Silberhorn.

CASE DECISION LIST

108379 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEVANTE SMITH

Affirmed.

Michelle J. Sheehan, J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Failure to comply; consecutive sentence; R.C. 2921.331(D); void; jurisdiction.*

Where the defendant's original sentence did not comply with the consecutive service mandate of R.C. 2921.331(D), the sentence was void. Therefore, the trial court properly exercised its continuing jurisdiction to correct a void sentence when it ordered, upon resentencing, the defendant's Cuyahoga County sentence to be served consecutively to his Lake County sentence for failure to comply.

108395 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JAMIE E. NEVELS

Reversed and remanded.

Michelle J. Sheehan, J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Guilty plea; Alford plea; protestations of innocence; Crim.R. 11; knowingly, intelligently, and voluntarily; factual basis.*

Defendant-appellant's statement that he pleads guilty but he is not guilty is a protestation of innocence sufficient to invoke the trial court's duty to further inquire into the factual basis surrounding the charges to determine whether defendant-appellant is making a knowing, intelligent, and voluntary plea. Where the trial court failed to so inquire, defendant-appellant's guilty plea was not made knowingly, voluntarily, or intelligently.

108414 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ROBERT D. HOWSE

Affirmed.

Mary J. Boyle, P.J., Kathleen Ann Keough, J., and Raymond C. Headen, J., concur.

KEY WORDS: *Mental health and developmental disabilities docket; Loc.R. 30.1; ineffective assistance of counsel; allied offenses of similar import; aggravated robbery; R.C. 2911.01(A)(1); aggravated burglary; R.C. 2911.11(A)(2).*

CASE DECISION LIST

(Case 108414 continued)

The trial court did not abuse its discretion when it did not transfer defendant's case to the mental health and developmental disabilities docket because the court did not know of defendant's borderline IQ until after arraignment. Therefore, under Loc.R. 30.1, it was within the trial court's discretion to keep defendant's case after determining that defendant was competent, despite defendant's borderline IQ. Trial counsel was not ineffective for failing to emphasize defendant's mental health issues because counsel requested that defendant be evaluated by the court's psychiatric clinic and discussed the results of the report on the record. Howse's aggravated burglary and aggravated robbery offenses did not merge for purposes of sentencing because they were committed separately.

108430 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ALFREDO REGALO

Affirmed in part, vacated in part, and remanded.

Eileen A. Gallagher, J., and Patricia Ann Blackmon, P.J., concur; Frank D. Celebrezze, Jr., J., dissents with separate opinion.

KEY WORDS: *R.C. 2953.08(G)(2); consecutive sentence findings; clear and convincing.*

Record clearly and convincingly did not support trial court's findings that consecutive sentences were necessary to protect the public from future crime and were not disproportionate to the danger defendant poses to the public. Consecutive aspect of defendant's sentences vacated; remanded for trial court to resentence defendant to concurrent terms.

108486 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SHAWN COLLINS

Affirmed.

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

KEY WORDS: *Motion for leave; motion for new trial; newly discovered evidence; Crim.R. 33(B); unavoidably prevented; evidentiary hearing.*

The trial court did not abuse its discretion when it denied defendant's Crim.R. 33(B) motion for leave to file a motion for new trial without an evidentiary hearing. Defendant did not show by clear and convincing evidence that he was unavoidably prevented from discovering the evidence sooner.

CASE DECISION LIST

108489 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CHRISTOPHER DELLY v HARBOR FREIGHT TOOLS USA INC., ET AL.

Affirmed.

Sean C. Gallagher, J., Eileen T. Gallagher, A.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Vacate arbitration award; Federal Arbitration Act; R.C. Chapter 2711; standard of review.*

Under Ohio law, parties may not contractually expand the scope of judicial review of arbitration awards beyond the statutory limitations set forth under R.C. 2711.10, which expressly provides the judicial authority to vacate arbitration awards.

108506 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SVYATOSLAV HRYTSYAK

Affirmed.

Frank D. Celebrezze, Jr., J., Sean C. Gallagher, P.J., and Raymond C. Headen, J., concur.

KEY WORDS: *OVI; motion to suppress; field sobriety tests; probable cause; reasonable suspicion; manifest weight; sufficiency; right to counsel; self-representation; blanket sentence.*

The trial court did not err in denying appellant's motion to suppress. The initial traffic stop was constitutionally valid and the arresting officer had probable cause to arrest appellant for OVI. Appellant's convictions were supported by sufficient evidence and are not against the manifest weight of the evidence. The trial court did not abuse its discretion in denying appellant's untimely request to represent himself. The trial court merged appellant's two OVI convictions, and therefore, did not impose a blanket sentence.

108519 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MARIAH CRENSHAW v CITY OF CLEVELAND LAW DEPARTMENT

Affirmed in part, reversed in part and remanded.

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

KEY WORDS: *Motion for default judgment; Civ.R. 55(A); summary judgment; Civ.R. 56(C); Ohio Public Records Act; R.C. 149.43; mandamus action; moot; statutory damages; reasonable time; pro se; attorney fees; R.C. 149.351; forfeiture damages.*

(Case 108519 continued)

Trial court did not abuse its discretion in denying relator’s motions for default judgment where trial court had granted respondent an extension of time within which to answer complaint and respondent thereafter filed a motion to dismiss, such that respondent’s answer was not due at the time relator filed her motions for default judgment.

Trial court did not err in determining that there was no genuine issue of material fact that respondent had produced all documents in its possession responsive to relator’s records requests and in granting summary judgment in favor of the respondent on mandamus claim. Respondent’s production of responsive documents in its possession after relator filed her complaint rendered relator’s application for a writ of mandamus moot.

Trial court erred in granting summary judgment in respondent’s favor on relator’s claim for statutory damages under R.C. 149.43(C)(2) where respondent presented no evidence explaining or justifying its delay in responding to relator’s records request. Trial court properly denied relator’s request for attorney fees under R.C. 149.43 because relator was a pro se litigant. Relator could not assert claim for spoliation and forfeiture damages under R.C. 149.351 on summary judgment that was not asserted in her complaint.

108533	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JOHNIE LLOYD MCCORMICK			

Affirmed.

Sean C. Gallagher, P.J., Patricia Ann Blackmon, J., and Eileen A. Gallagher, J., concur.

KEY WORDS: Aggravated robbery; motion to suppress; probable cause; search warrant; plain error; anonymous tip; ineffective assistance.

Affirmed appellant’s conviction for aggravated robbery. Trial court’s denial of motion to suppress was upheld upon finding the magistrate had a substantial basis for concluding that probable cause existed to issue the search warrant. No plain error was found in regard to the introduction of statements made by an anonymous informant at trial. Appellant failed to demonstrate ineffective assistance of counsel.

108592	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v TARAJUANA CROWELL			

CASE DECISION LIST

Affirmed.

Sean C. Gallagher, P.J., Patricia Ann Blackmon, J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Trafficking in drugs; possession of drugs; endangering children; Crim.R. 29; motion for acquittal; sufficient evidence; constructive possession; rebuttal witness; harmless error.*

Affirmed appellant's conviction for trafficking in drugs, possession of drugs, and three counts of endangering children. The trial court did not err in denying appellant's Crim.R. 29 motion for acquittal. The evidence was sufficient to establish that appellant was involved in trafficking marijuana, that she had constructive possession of the marijuana, and that by permitting illegal drugs to be present in the home, she created a substantial risk to the health or safety of the children who were present. Any error with regard to the admission of rebuttal witness testimony was harmless error.

108673	CLEVELAND MUNI.	G	CIVIL MUNI. & CITY
TREVOR KERSHEVICH v LIZ PAHN			

Affirmed.

Patricia Ann Blackmon, J., Sean C. Gallagher, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Civ.R. 60(B); relief from judgment.*

Where the appellant maintained that the appellee did not testify truthfully, and did not file the transcript with the trial court to support objections to the magistrate's report. The trial court's denial of relief from judgment under Civ.R. 60(B) was not an abuse of discretion.

108747	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v OCIE REDDICK			

Affirmed in part, vacated in part, and remanded.

Frank D. Celebrezze, Jr., J., Patricia Ann Blackmon, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Sentence; contrary to law; void; sentencing authority; R.C. 2953.08; aggravated murder; attempted murder; R.C. 2929.03; R.C. 2929.11; hearing.*

The trial court did not err in denying appellant's motion to vacate his sentence for aggravated murder because the sentence comported with the statutory language set forth in R.C. 2929.03(A), and therefore, is not contrary to law. The trial court's sentence for attempted murder failed to comport with the statutory language set forth in former R.C. 2929.11(B)(4), and therefore, is contrary to law.

CASE DECISION LIST

108760 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE DE.D., ET AL.

Affirmed.

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

KEY WORDS: *Permanent custody; case plan; disposition.*

There was clear and convincing evidence to support granting permanent custody of the children to the agency. Putative Father's whereabouts are unknown. The children were severely abused while in Mother's care. Mother has mental health issues and has lost custody of the five children.

109104 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LINNIE EDWARDS

Modified and remanded.

Frank D. Celebrezze, Jr., J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Sentence; R.C. 2929.15; theft; community control sanctions; violation; contrary to law; conceded error.*

The one-year prison sentence for violating community control sanctions is contrary to law. Appellant was convicted of fifth-degree felony theft, and she violated her community control sanctions by committing a misdemeanor offense. Pursuant to R.C. 2929.15(B)(1)(c)(i), the prison sentence for violating community control could not exceed 90 days.