

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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November 19, 2020

108997 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v CARL O. LAVETTE III

Affirmed.

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

KEY WORDS: *Postconviction; petition; recantation; witness; due process; constitutional claim.*

Trial court did not abuse its discretion in denying defendant's petition for postconviction relief without holding an evidentiary hearing because the defendant failed to raise a recognized constitutional claim or substantive ground for relief. A violation of due process is not implicated merely because a witness recants his trial testimony.

109228 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
PHYLLIS PANTONA v ERIEVIEW LAND COMPANY LLC

Reversed and remanded.

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

KEY WORDS: *Slip and fall; negligence; duty; open and obvious; summary judgment.*

The record contains evidence that created an issue of material fact for a jury to determine whether a six-inch curb was an open-and-obvious hazard where the elevation change may have been concealed by yellow painting on the curb edge being extended to the garage floor immediately below, thus potentially creating a concealed and latent hazard. The trial court improperly granted defendant property owner's motion for summary judgment.

109262 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTHONY BALDUCCI

Affirmed.

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

KEY WORDS: *Presentence motion to withdraw guilty plea; Crim.R. 32.1.*

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(Case 109262 continued)

Original court did not abuse its discretion in denying defendant-appellant's presentence motion to withdraw his guilty plea. The record demonstrated that he was represented by competent counsel, was afforded a full Crim.R. 11 hearing before he entered his plea, was given a full and impartial hearing on his motion to withdraw, that the original court gave full and fair consideration to his plea-withdrawal request, and that he understood the nature of the charges and the possible penalties.

109288 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOSE HERNANDEZ

Affirmed.

Mary J. Boyle, P.J., and Sean C. Gallagher, J., concur; Kathleen Ann Keough, J., concurs in judgment only with separate opinion.

KEY WORDS: R.C. 2953.08(D)(1); reviewability of jointly recommended sentencing range; R.C. 2929.11; purposes and principles of felony sentencing; R.C. 2929.12; seriousness and recidivism factors.

The trial court imposed a sentence within the jointly proposed sentencing range, and the sentence was authorized by law. R.C. 2953.08(D)(1) prevents us from reviewing Hernandez's appeal that the trial court failed to comply with R.C. 2929.11 and 2929.12.

109480 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE J.C-A., ET AL.

Affirmed.

Mary J. Boyle, P.J., Eileen A. Gallagher, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: R.C. 2151.414; permanent custody; best interest; "12 of 22."

The juvenile court's judgment awarding permanent custody of the children to Cuyahoga County Department of Children and Family Services was affirmed. The record clearly and convincingly supported the juvenile court's findings that the children had been in the agency's temporary custody for 12 or more months of a consecutive 22-month period and that it was in their best interest to be placed in permanent custody.