

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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February 18, 2021

109305 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DREQUELL MAXEY

Affirmed in part, vacated in part, remanded.

Eileen A. Gallagher, J., Sean C. Gallagher, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *R.C. 2923.161; R.C. 2901.22; R.C. 2903.11; knowingly; sufficiency of the evidence; manifest weight of the evidence.*

Where the evidence established that the defendant fired a gun into two different apartments, the defendant may not be convicted of more than two counts of improper discharge.

A sufficiency challenge to an improper discharge conviction on the basis that the state did not prove the defendant did so knowingly, fails where the jury could have reasonably concluded that the defendant was aware he was in a first-floor apartment and that by shooting into the ceiling, the bullet would probably go into the apartment upstairs.

The state presented sufficient evidence to prove improper discharge where direct and circumstantial evidence established that the defendant, standing outside, fired a gun into an apartment, striking an occupant inside.

Convictions for improper discharge and felonious assault are not against the manifest weight of the evidence where the defendant does not claim, and the record does not contain conflicts in the evidence, the resolution of which created a manifest miscarriage of justice. De minimis inconsistency in testimony does not create a manifest miscarriage of justice.

109394 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
NATIONSTAR MORTGAGE LLC v D'ANDRE L. JESSIE, ET AL.

Affirmed.

Mary J. Boyle, A.J., Sean C. Gallagher, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Foreclosure; summary judgment; Civ.R. 56(C); standing; objections to a magistrate's decision; Civ.R. 53(D); Civ.R. 56(F).*

The trial court's judgment and decree of foreclosure was affirmed. Appellants' arguments had no merit because they failed to raise them in their objections to the magistrate's decision. Further, appellants failed to file an affidavit with their brief opposing appellee's summary judgment motion as required by Civ.R. 56(F).

CASE DECISION LIST

109439 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TEVAUGHN DARLING

Affirmed.

Eileen A. Gallagher, J., Mary J. Boyle, A.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Motion to withdraw guilty pleas; Crim.R. 32.1; manifest injustice; evidentiary hearing; jurisdiction; convictions affirmed; res judicata; unsubstantiated assertions.*

Trial court did not abuse its discretion in denying defendant's postconviction motion to withdraw his guilty pleas under Crim.R. 32.1 because it had no jurisdiction to consider defendant's motion after appellate court affirmed defendant's convictions. Even if trial court had jurisdiction to consider defendant's motion, consideration of his claims would be barred by the doctrine of res judicata because defendant raised, or could have raised, any claims related to the ineffectiveness of his defense counsel and the unknowing, unintelligent and involuntary nature of his guilty pleas in his direct appeal or his prior petition for postconviction relief. Further, defendant's conclusory allegations and assertions, unsupported by affidavits or other relevant evidentiary materials, were insufficient to demonstrate a manifest injustice or to warrant a hearing on his motion.

109453 EUCLID MUNI. G CIVIL MUNI. & CITY
RENEA MILLER v LISA JOHNSON, ET AL.

Dismissed and remanded.

Sean C. Gallagher, P.J., Kathleen Ann Keough, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Jurisdiction; final appealable order; mootness doctrine; forcible entry and detainer; stay of execution.*

The panel lacks jurisdiction to consider the merits of the arguments presented in light of the fact that the claims with respect to the forcible entry and detainer action were mooted by the defendant's surrender of the premises and in light of the pending counterclaim that has yet to be resolved.

109778 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DERRICK A. MCCRUTER v ADVANTAGE IMAGING OF LAKE COUNTY, LLC

Affirmed.

Lisa B. Forbes, J., Kathleen Ann Keough, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: Motion for judgment on the pleadings; violation of bankruptcy discharge; consumer sales practices act; federal preemption.

The trial court did not err by granting the defendant's motion for judgment on the pleadings, because plaintiff's claim that defendant violated the consumer sales practices act rests squarely on whether the defendant violated plaintiff's bankruptcy discharge, and determinations concerning a bankruptcy discharge must be made in federal bankruptcy court.