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Court of Appeals, Eighth Appellate District

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June 17, 2021

109023 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MICHAEL STANSELL

Affirmed.

Decision En Banc:

Mary J. Boyle, A.J., Frank D. Celebrezze, Jr., Kathleen Ann Keough, Eileen A. Gallagher, Eileen T. Gallagher, Michelle J. Sheehan, Lisa B. Forbes, and Emanuella D. Groves, JJ., concur.

Sean C. Gallagher, J., concurs with separate opinion.

Larry A. Jones, Sr., J., dissents with separate opinion with Mary Eileen Kilbane and Anita Laster Mays, JJ.

Decision of the Merit Panel:

Larry A. Jones, Sr., P.J., Mary Eileen Kilbane, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *En banc; void; voidable; subject-matter jurisdiction; personal jurisdiction; direct appeal; ex post facto.*

If the sentencing court has subject-matter jurisdiction over the case and personal jurisdiction over the defendant, any sentencing error, including the imposition of a sentence that exceeds statutory limitations, is not void, but voidable.

A sentencing issue subject to being vacated because it is voidable must be raised on direct appeal.

Ex post facto principles do not apply when a defendant is not incorrectly sentenced because of a statutory change.

109328 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DETTRICK WALKER

Affirmed.

Sean C. Gallagher, J., and Emanuella D. Groves, J., concur; Mary J. Boyle, A.J., concurs in judgment only.

KEY WORDS: *Sufficiency of the evidence; weight of the evidence; self-defense; jury instructions; R.C. 2901.05; inconsistent verdict; ineffective assistance of counsel; R.C. 2953.08.*

The defendant's conviction for felonious assault based on a mortal shooting is not against the weight of the evidence because the evidence demonstrating that the defendant was not acting in self-defense was not inherently unreliable and the conviction was not the product of ineffective assistance of counsel or inconsistent

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with the jury's acquittal of other charges. Finally, there is no statutory basis to review the maximum sentence imposed.

109454 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHRISTOPHER O'MALLEY

Affirmed.

Mary Eileen Kilbane, J., Sean C. Gallagher, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: R.C. 2923.13; having weapons while under disability; sufficient evidence; manifest weight; grand theft; firearm; collateral estoppel; restitution order; judgment affirmed.

Even though defendant was acquitted by a jury of grand theft of a firearm, defendant's conviction for having a weapon while under disability by the trial court was supported by sufficient evidence and not against the manifest weight of the evidence. The inconsistent acquittal and conviction, because they are on separate and independent counts, are not barred by collateral estoppel. Last, the restitution order was for economic loss suffered by the victim as a proximate result of his possession of her firearm under a disability and therefore was not contrary to law.

109523 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
BARBARA A. BELOVICH v ELLEN CONDREN CROWLEY, ET AL.

Affirmed.

Emanuella D. Groves, J., Michelle J. Sheehan, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: Summary judgment; foreclosure; service of process; objections to magistrate's decision; and revocable trusts.

The trial court properly denied a motion for summary judgment premised on failure of service, where the record reflected that certified mail was properly sent, received, and signed by other pursuant to Civ.R. 4.1, and the defendant failed to present any evidence to overturn the rebuttable presumption of proper service.

The trial court properly awarded damages on counterclaim where defendant objected to the decision of magistrate but failed to provide a transcript of the proceeding and, after conducting a thorough hearing, determined that the award of damages was supported by the evidence.

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109713 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
E.O.W. v L.M.W.

Affirmed.

Michelle J. Sheehan, J., Larry A. Jones, Sr., P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Divorce; child support; R.C. 3119.04(B); QDRO.*

Wife's claim that the trial court failed to follow the appellate court's remand instructions for the determination of child support is without merit. The trial court did not err in determining child support pursuant to R.C. 3119.04(B). There was no abuse of discretion by the trial court in not sanctioning wife's counsel's conduct in connection with the QDRO matter.

109823 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTHONY J. PETRONZIO

Affirmed.

Michelle J. Sheehan, J., Sean C. Gallagher, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *No contest plea; ineffective assistance of counsel.*

Appellant's claims that he did not enter into a no contest plea knowingly and intelligently and that his counsel provided ineffective assistance of counsel lack merit. The trial court's judgment convicting appellant of menacing by stalking is affirmed.

109888 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
PATRICIA J. HOENIGMAN, ET AL. v WILMARIE RUIZ

Dismissed.

Mary J. Boyle, A.J., Anita Laster Mays, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Final order; R.C. 2505.02(B)(1); Civ.R. 54(B); punitive damages; attorney fees.*

The trial court's judgment granting partial summary judgment on the issues of punitive damages and attorney fees is not a final order pursuant to R.C. 2505.02(B)(1) because it did not dispose of the whole merits of any of appellants' claims. The trial court's Civ.R. 54(B) certification that there is "no just reason for delay" did not cure the defect.

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109892 BEDFORD MUNI. C CRIMINAL MUNI. & CITY
CITY OF SOLON v CHUANBAO LIU

Affirmed.

Mary J. Boyle, A.J., Kathleen Ann Keough, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Foreign language interpreter; administration of oath; R.C. 2311.14(B); qualifications of interpreter; Evid.R. 604; plain error; Crim.R. 52(B); structural error; ineffective assistance of counsel.*

The trial court's wording of the oath it administered the interpreter and its failure to identify her qualifications on the record do not amount to structural or plain error. The defendant does not claim that the interpreter failed to make truthful interpretations or that she was unqualified to interpret the proceeding for him. The defendant has not established that his counsel was ineffective for failing to object to the interpreter's oath or qualifications because there is nothing in the record to show that the result of the proceeding would have been different if he objected.

109967 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE T.W., ET AL.

Affirmed.

Lisa B. Forbes, J., Kathleen Ann Keough, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Termination of parental rights; permanent custody; R.C. 2151.414; best interest of the children; clear and convincing evidence.*

The court's termination of Mother's parental rights and award of permanent custody to the agency was supported by clear and convincing evidence in the record. Mother did not comply with her case plan created by the agency. Evidence presented at the hearing supported the court's findings that mother had not addressed her mental-health issues, could not provide adequate permanent housing for the Children, and had not remedied the issues that led to the removal of the Children from Mother's custody.

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109972 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KEENA WILLIAMS

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: *Motion to withdraw; guilty; plea; presentence; pro se; hybrid representation; hearing; consecutive; findings; supported; clear and convincing; no contact; prison term; felony sentencing.*

The trial court did not abuse its discretion by declining to rule on defendant's pro se motion to withdraw his guilty pleas without a hearing. The trial court's imposition of consecutive sentences is not clearly and convincingly unsupported by the record. The trial court erred by imposing a no-contact order when the court had also imposed a prison term.

109980 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MICHAEL T. MERIMEE v SYLVIA A. WILDNER, ET AL.

Affirmed.

Sean C. Gallagher, P.J., Kathleen Ann Keough, J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Negligence; inherently dangerous; standard of care; frequenter; independent contractor.*

The trial court did not err in granting summary judgment in favor of the defendants upon all claims because the danger of falling while painting an elevated area of a residential home is intrinsic to the work the plaintiff, an independent contractor, was hired to perform.

110015 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE T.S.

Affirmed.

Emanuella D. Groves, J., Kathleen Ann Keough, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Parental rights; permanent custody; totality of the circumstances; COVID-19 continuance.*

Evidence supported juvenile court's termination of father's parental rights where evidence showed father did not become involved in case until several months after his daughter was taken into custody, and where once involved, he did not obtain or maintain a

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stable residence for the child, and he failed to complete case plan objectives to address substance abuse issues.

Additionally, where father did not request a continuance due to COVID-19 and raises the issue for the first time on appeal, absent plain error, the juvenile court cannot be found to have erred in not continuing the case.

110059	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JEFFREY SQUIRES			

Affirmed and remanded.

Michelle J. Sheehan, J., Anita Laster Mays, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: Consecutive sentences; R.C. 2929.14(C)(4)(b); course of conduct; nunc pro tunc entry.

The trial court imposed consecutive sentences, finding consecutive sentences were necessary to protect the public and punish the offender, were not disproportionate to the conduct of the offender, and that at least two of the multiple offenses were committed as a part of one or more courses of conduct and that harm caused by two or more multiple offenses so committed were so great or unusual that no single prison term for any of the offenses committed. Where three sexual assaults occurred over a five-month period against a disabled individual, the trial court properly found that they were committed as a course of conduct when it determined that there was a similar motivation for the three offenses. An entry of conviction must reflect what occurred in court. The trial court is ordered to enter nunc pro tunc, an entry of conviction that reflects the sentence imposed in court.