

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 7

March 18, 2021

108748 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MICHAEL SUTTON

108750 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KENNY PHILLIPS

Reversed, vacated, and remanded.

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

KEY WORDS: *Crim.R. 33, new trial, Brady violation.*

The trial court's decision that appellants are not entitled to a new trial is in error. The state's case was based solely on the alleged eyewitness testimony of two police officers that appellants shot the victims and shot at one of the officers. The broad police search discovered no evidence of weapons, shells, bullet holes, or other evidence that appellants possessed or fired guns. The sole physical evidence in the case was a minimal amount of possible GSR on the hand of one appellant that experts testified: (1) may have been transferred from the police vehicle during transport, (2) did not prove the individual shot a gun, or (3) may possibly have been brake lining material or fireworks residue that have the same chemical composition. One of the appellants had brake repairs made and picked up his car the day of the Memorial Day weekend incident.

The newly discovered eyewitness evidence from two officers also present at the scene conflicts with the testimony of the original officers and supports the testimony of appellants that they did not commit the crimes alleged. The evidence is material, exculpatory, useful for impeachment purposes, and constitutes a Brady violation. Appellants were prejudiced by the suppressed evidence and their due process rights were violated. Appellants are entitled to a new trial.

109060 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JAMES M. HARRIS

Affirmed.

Emanuella D. Groves, J., Anita Laster Mays, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Ineffective assistance of counsel; motion to suppress; identification procedure; and manifest weight of the evidence.*

To establish a claim of ineffective assistance of counsel, Harris must demonstrate (1) his counsel was deficient in some aspect of

(Case 109060 continued)

his representation, and (2) there is a reasonable probability that, were it not for counsel's errors, the result of the trial would have been different. Thus, "the failure to make a showing of either deficient performance or prejudice defeats a claim of ineffective assistance of counsel."

Harris claims he was denied the effective assistance of counsel because trial counsel should have filed a motion to suppress the pretrial identification. However, the evidence, when viewed under the totality of the circumstances, does not indicate that the identification procedure was unduly suggestive or unreliable and a motion to suppress the identification would have been denied. Consequently, the failure to do a futile act cannot be the basis for a claim of ineffective assistance of counsel, nor could such a failure be prejudicial.

Weight of the evidence involves the inclination of the greater amount of credible evidence. Weight of the evidence concerns "the evidence's effect of inducing belief." The reviewing court must consider all the evidence in the record, the reasonable inferences, and the credibility of the witnesses to determine whether in resolving conflicts in the evidence, the factfinder clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.

Harris claims his convictions were against the manifest weight of the evidence because the witnesses were not credible. However, after reviewing the entire record in this case, weighing the strength and credibility of the evidence presented and the inferences to be reasonably drawn therefrom, we cannot say that the trial court lost its way and created such a manifest miscarriage of justice that Harris's convictions are against the manifest weight of the evidence.

109283	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v RAFAEL AQUILAR			

Affirmed.

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

KEY WORDS: *Consecutive sentences; R.C. 2929.14; R.C. 2953.08.*

In challenging whether the trial court record supports consecutive sentences on appeal, an appellant must show that the record clearly and convincingly does not support the court's consecutive sentence findings. Where the record otherwise contains evidence to support the court's findings, appellant's speculation as to evidence that is not in the record does not meet the burden on appeal.

CASE DECISION LIST

109442 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TERRY BARNES, SR.

Affirmed.

Anita Laster Mays, P.J., Kathleen Ann Keough, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Guilty plea; motion to withdraw; presentence; abuse of discretion; involuntary manslaughter; new evidence; self-defense; Crim.R. 11; hearing; ineffective assistance of counsel.*

The trial court did not abuse its discretion in denying appellant's motion to withdraw his guilty plea.

109450 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DONNIE WALKER, JR. v STATE OF OHIO

Affirmed.

Kathleen Ann Keough, J., Sean C. Gallagher, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Wrongfully imprisoned individual; R.C. 2743.48; R.C. 2305.02; judgment on the pleadings; community control sanctions; void sentences; violations of local rules; issues not raised below.*

Trial court did not err in granting the state's motion for judgment on the pleadings on plaintiff's declaratory judgment action pursuant to R.C. 2305.02 and 2743.48 that he be declared a wrongfully imprisoned individual because although plaintiff was incarcerated on void sentences, he did not meet all the factors of R.C. 2743.48 to be declared a wrongfully imprisoned individual; appellate court did not address plaintiff's arguments regarding alleged violations of the local rules of the common pleas court because plaintiff had not raised those issues in the trial court, and an appellate court will not consider new arguments and issues for the first time on appeal.

109506 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v GARY GRAY

Affirmed.

Mary J. Boyle, A.J., and Michelle J. Sheehan, J., concur; Larry A. Jones, Sr., J., concurs in judgment only.

KEY WORDS: *Sexual predator; Megan's Law; H.B. 180.*

The trial court's judgment classifying the defendant as a sexual

CASE DECISION LIST

(Case 109506 continued)

predator was affirmed. The state established by clear and convincing evidence that the defendant was likely to reoffend sexually in the future.

109517 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
AMANDA BRANDT v ROY POMPA

Affirmed.

Kathleen Ann Keough, J., Anita Laster Mays, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: R.C. 2315.18; damage caps for noneconomic loss; as-applied constitutional challenge; minors who are victims of sexual assault; trial by jury; open courts and a remedy; due process of law; equal protection.

Applying the damage caps for noneconomic loss in R.C. 2315.18 to appellant, a victim of sexual assault as a minor, did not violate appellant's constitutional rights to a jury trial, open courts and a remedy, due process of law, and equal protection.

109527 CLEVELAND HTS. MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND HEIGHTS v JIMMY COLEMAN

Affirmed.

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

KEY WORDS: R.C. 2941.401; R.C. 2945.71 et seq.; speedy trial; notice of availability.

The trial court did not err by denying a motion to dismiss alleging a violation of the defendant's statutory speedy trial rights under R.C. 2941.401 because the defendant was released from jail before being brought to trial and the defendant's statutory rights were solely governed by R.C. 2945.71 et seq.

109599 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MARTIN M. WHITEHEAD

Affirmed in part, reversed in part, and remanded.

Mary J. Boyle, A.J., and Michelle J. Sheehan, J., concur; Larry A. Jones, Sr., J., concurs with separate opinion.

CASE DECISION LIST

(Case 109599 continued)

KEY WORDS: Consecutive sentences; Reagan Tokes Act; R.C. 2929.14(C)(4); R.C. 2929.11; R.C. 2929.12; allied offenses.

The trial court's judgment was affirmed in part, reversed in part, and remanded. The trial court failed to address allied offenses at the sentencing hearing. The trial court also failed to properly apply the Reagan Tokes Act to the defendant's qualifying offenses, which were his first- and second-degree felony convictions.

109617	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v CARLOS D. CRESPO			

109741	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v CARLOS D. CRESPO			

Affirmed.

Sean C. Gallagher, P.J., Frank D. Celebrezze, Jr., J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Petition for postconviction relief; R.C. 2953.21; motion to withdraw plea; Crim.R. 32.1; R.C. 2929.14.*

The trial court did not err in denying the defendant's untimely petition for postconviction relief or his separate motion to withdraw his plea filed under Crim.R. 32.1.

109638	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
ARTISTIC CARPET WAREHOUSE, INC. v JAMIE KING, DBA, SHOP N PLAY			

Reversed and remanded.

Frank D. Celebrezze, Jr., J., Sean C. Gallagher, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Summary judgment; Civ.R. 56; breach of contract; genuine issue of material fact; motion for leave; expert report; partial performance; material breach; damages.*

The trial court erred in granting summary judgment in favor of defendant-appellee. Genuine issues of material fact exist that precluded judgment as a matter of law in defendant-appellee's favor.

CASE DECISION LIST

109645 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DARRIN E. ENGLISH

Affirmed.

Larry A. Jones, Sr., J., Mary J. Boyle, A.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *R.C. 2950.05(F)(1)/sexual offender registration requirement; community control sanctions; double jeopardy; Crim.R. 52(B)/plain error.*

Review is for plain error because appellant failed to raise the issue of a due-process violation at the trial-court level. Appellant admitted his violation of the community control sanctions during the preliminary hearing and the imposed prison sentence was a result of that violation, not a prison sentence for a new offense. There was no due-process violation of appellant's rights and neither does double jeopardy apply here.

109658 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v JERMAEL BURTON

Reversed and remanded.

Anita Laster Mays, J., Mary J. Boyle, A.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *R.C. 2953.21, petition to vacate convictions, Brady violation.*

The trial court's denial without a hearing of appellant's petition for postconviction relief constitutes an abuse of discretion. Appellant supported the timely filed petition with allegedly newly discovered evidence that, if believed, may be material, exculpatory, or exonerating under Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). Petitioner denied that he resided in the unit where the contraband was located. The newly discovered evidence refutes the state's witness testimony and exhibits regarding when and where petitioner's vehicle was towed in support of petitioner's claim that the contents of his vehicle had been removed and placed within the living unit to establish petitioner's possession and control. The record also indicates confusion between the trial and postconviction exhibits during the postconviction proceedings.

109706 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ISAAC L. HOBBS

CASE DECISION LIST

Affirmed.

Larry A. Jones, Sr., J., Mary J. Boyle, A.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Crim.R. 3.1/motion to withdraw guilty plea/motion to vacate; findings of fact and conclusions of law; abuse of discretion; res judicata.*

The trial court's judgment against appellant was voidable, not void; therefore appellant could have filed a direct appeal on the issue of vacating his guilty plea. Appellant failed to file a direct appeal and his postsentence motion to withdraw his guilty plea is barred by the doctrine of res judicata. Additionally, pursuant to Crim.R. 32.1, the trial court was not obligated to issue findings of fact and conclusions of law where it denied appellant's postsentence motion to withdraw his guilty plea. There was no abuse of discretion where the trial court denied appellant's postsentence motion to withdraw his guilty plea.

109751 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DAWN SIDWELL, ET AL. v ALLSTATE FIRE AND CASUALTY INSURANCE, ET AL.

Reversed and remanded.

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

KEY WORDS: *Civ.R. 15(C); substitute party; abuse of discretion.*

The trial court erred by denying a motion to substitute the misnamed defendant under Civ.R. 15(C) because the substitution of the defendants would have enabled the plaintiffs to state a claim upon which relief may be granted and no basis for denying the motion to substitute is apparent from the record.