

October 14, 2021

109302 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LANCE KNIGHT

Affirmed.

Emanuella D. Groves, J., Mary J. Boyle, A.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Crim.R. 11; guilty plea; knowingly, intelligently, and voluntarily; constitutional guarantees; waiving constitutional rights; mental illness.*

Due process requires that a defendant's plea be made knowingly, intelligently, and voluntarily; otherwise, the defendant's plea is invalid. When a trial court fails to explain the constitutional rights that a defendant waives by pleading guilty or no contest, we presume that the plea was entered involuntarily and unknowingly, and no showing of prejudice is required.

To aid our analysis, the Ohio Supreme Court in State v. Dangler, 162 Ohio St.3d 1, 2020-Ohio-2765, 164 N.E.3d 286, provided a three-question test namely: (1) has the trial court complied with the relevant provision of [Crim.R. 11]? (2) if the [trial] court has not complied fully with the rule, is the purported failure of a type that excuses a defendant from the burden of demonstrating prejudice? and (3) if a showing of prejudice is required, has the defendant met that burden?

Appellant raises an assortment of challenges to the trial court's review of the nature of the charges, the maximum penalties involved, and the effect of his pleas as required by Crim.R. 11(C)(2)(a) and (b). Because appellant's challenges all involve parts of the rule that relate to nonconstitutional issues, appellant must affirmatively show prejudice to invalidate his plea where the trial court fails to comply fully with Crim.R. 11(C)(2)(a)-(b). Dangler ¶ 14. Our review of the transcript of the sentencing hearing reveals a textbook compliance with these requirements.

Appellant asserts that his declining mental and physical condition impacted his guilty pleas. Specifically, that his schizoaffective disorder, frequent hallucinations, hearing voices, and seeing ghosts, along with his 58-pound weight loss, possibly due to a staph infection, rendered his pleas not knowingly, voluntarily, and intelligently made.

However, it is well established, that a defendant does not lack mental capacity to enter a plea, or that a trial court does not err in accepting a plea, merely because a defendant was suffering from a mental illness or was taking psychotropic medication when he entered the plea. A defendant is not incompetent to plead guilty solely because he suffers from a mental illness.

Our review reveals that appellant unequivocally indicated that he was not experiencing any adverse effects from his medications,

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that his ability to understand or enter a plea was not impacted by his medications, and that he understood what was happening on the day he entered his pleas. As such, we find that the trial court fully complied with Crim.R. 11 and that appellant entered his guilty pleas knowingly, intelligently, and voluntarily.

109766 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
WILLIE PHELPS, ET AL. v COMMUNITY GARDEN ASSOCIATION, INC.

Affirmed in part and reversed in part.

Mary Eileen Kilbane, J., and Eileen A. Gallagher, P.J., concur; Eileen T. Gallagher, J., dissents with separate opinion.

KEY WORDS: Summary judgment; declaration; amendment; assessment; notice; slander of title; attorney fees.

Where the association failed to satisfy its reciprocal burden under the declaration to provide homeowners notice of assessments, it was unable to show that it was entitled to summary judgment as a matter of law with respect to unpaid assessments. The trial court erred in granting summary judgment in the association's favor for unpaid assessments. Because the judgment upon which attorney fees were based is reversed, the award of attorney fees was error. The trial court did not err in denying homeowners' summary judgment motion on their slander of title claim when they were unable to establish malice, an essential element of the claim.

109797 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RICHARD TENNEY

109798 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTHONY METZ

109799 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JAUSTIN BROWNING

109800 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTHONY BERGANT

Reversed and remanded.

Anita Laster Mays, J.; Michelle J. Sheehan, J., concurs in judgment only with separate opinion; Mary J. Boyle, A.J., concurs with separate opinion of Judge Michelle J. Sheehan.

KEY WORDS: Abuse of discretion; postconviction relief; harmless error; R.C. 2953.21.

The trial court abused its discretion when it granted the appellees'

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petitions for postconviction relief, under R.C. 2953.21, without holding an evidentiary hearing.

109952 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHRISTOPHER ROSAS

Affirmed.

Emanuella D. Groves, J., Anita Laster Mays, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Manifest weight of the evidence; credibility; inconsistent testimony; R.C. 2907.05(A)(5); gross sexual imposition; character-witnesses; Evid.R. 404(A)(1).*

A challenge to the manifest weight of the evidence attacks the credibility of the evidence presented. It “addresses the evidence’s effect of inducing belief,” that is, whether the state’s or the defendant’s evidence is more persuasive.

In analyzing a claim under the manifest weight standard, we are required to give “due deference” to the factfinder’s conclusions because the demeanor of witnesses, the manner of their responses, and many other factors observable by the factfinder simply are not available to an appellate court on review. Thus, we must keep in mind that questions of weight and credibility are primarily for the trier of fact to determine.

Appellant challenges his convictions, broadly claiming that the testimony was inconsistent and should be viewed with suspicion. Appellant specifically claims that the testimonies of both preteen girls were inconsistent in several respects.

While we acknowledge minor inconsistencies in the preteens’ testimonies, both testified consistently about appellant’s actions that were in violation of R.C. 2907.05(A)(5). A conviction is not against the manifest weight of the evidence solely because the jury heard inconsistent testimony. The trier of fact may take note of any inconsistencies and resolve them, accordingly, choosing to believe all, none, or some of a witness’s testimony. As such, appellant’s convictions were not against the manifest weight of the evidence.

Appellant also argues the trial court should not have permitted the state to cross-examine his four character witnesses about a sexual misconduct accusation lodged against him by an adult woman. While the Rules of Evidence generally prohibit the use of character evidence to show that an accused has the propensity to commit the crime with which he or she stands charged, it is well established that once an accused puts evidence of a pertinent character trait in issue, the prosecution may offer evidence to rebut the accused’s character evidence.

Appellant put forth a defense that he would never sexually impose himself to a child or to an adult and then proceeded to present the

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testimony of four character-witnesses, who generally testified that appellant was above and beyond reproach. By introducing evidence of his good character, through those four witnesses, appellant “opened the door” for the prosecution, to rebut or impeach the character evidence on cross-examination. As such, the trial court did not abuse its discretion in allowing the state to cross-examine the character witnesses on the allegation of sexual misconduct brought against appellant by an adult woman.

110002 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
TLOA ACQUISITIONS, LLC v UNKNOWN HEIRS OF ROOSEVELT WAGNER, SR., ET AL.

Affirmed.

Mary Eileen Kilbane, J., Kathleen Ann Keough, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Oral agreement; tax certificate; repayment plan; estoppel; assignee of tax certificate bound by prior arrangement; Civ.R. 53(D)(3)(b)(i); failure to object to magistrate decision; untimely objection to magistrate decision; partial performance; exception to statute of frauds.

Failure to object to the magistrate’s decision in the lower court resulted in forfeiture of the issues on appeal except for any plain error. Upon review of the record, it was not plain error for the magistrate to find an oral agreement between the tax certificate holder and the payee when 17 payments pursuant to the plan had already been paid. Assignee who was assigned the tax certificate was bound to uphold those oral terms. It was also not plain error to order the new certificate holder to accept the original agreed upon remaining balance without awarding interest, especially considering the holder was the party who breached the contract resulting in protracted litigation.

110253 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LESLIE EVANS

Affirmed.

Michelle J. Sheehan, J., Mary J. Boyle, A.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: Consecutive sentences; maximum sentence; R.C. 2911.11 and 2911.12.

In light of State v. Jones, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649, we find no merit to Evans’s claim that his maximum sentence is not supported by the record. Furthermore, our review of the transcript reflects that the trial court engaged in the consecutive analysis and the record contains evidence to support its findings.

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110283 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RAMON GRAY

Affirmed.

Anita Laster Mays, P.J., Larry A. Jones, Sr.* , J., and Mary Eileen Kilbane, J., concur.

* Judge Larry A. Jones, Sr., concurred in this Journal Entry and Opinion prior to his death on October 7, 2021.

(The Ohio Constitution requires the concurrence of at least two judges when rendering a decision of a court of appeals. Therefore, this announcement of decision is in compliance with constitutional requirements. See State v. Pembaur (1982), 69 Ohio St.2d 110.)

KEY WORDS: *Motion to file leave; abuse of discretion; res judicata.*

The trial did not abuse its discretion by denying the appellant's motion, because the appellant's claims are barred by res judicata.

110313 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RICHARD D. AARONS

Dismissed.

Eileen A. Gallagher, J., Larry A. Jones, Sr., P.J.,* and Kathleen Ann Keough, J., concur.

*Judge Larry A. Jones, Sr., concurred in this Journal Entry and Opinion prior to his death on October 7, 2021.

(The Ohio Constitution requires the concurrence of at least two judges when rendering a decision of a court of appeals. Therefore, this announcement of decision is in compliance with constitutional requirements. See State v. Pembaur (1982), 69 Ohio St.2d 110.)

KEY WORDS: *Jurisdiction; judgment of conviction; sentencing journal entry; final, appealable order; blanket sentence; separate sentences; nunc pro tunc entry.*

Sentencing journal entry was not a final judgment of conviction and, therefore, was not a final, appealable order where it did not impose separate sentences on each of the counts of which defendant was convicted. Trial court lacked jurisdiction to issue corrected sentencing journal entries while appeal was pending because the corrected entries directly related to and affected matters assigned as error on appeal and were, therefore, inconsistent with the jurisdiction of the appellate court to reverse, modify, or affirm the trial court's judgment. Further, corrected sentencing entries were not proper nunc pro tunc entries because they did not reflect what occurred at the sentencing hearing and were, therefore, void.

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110379 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE D.P.

Affirmed.

Eileen T. Gallagher, J., and Frank D. Celebrezze, Jr., P.J., concur; Lisa B. Forbes, J., dissents with separate attached opinion.

KEY WORDS: *Permanent custody; anger management; domestic violence; parenting; best interest; remedy; reasonable time; case plan; abuse of discretion; termination; parental rights; clear and convincing evidence.*

The juvenile court did not err by awarding permanent custody of the child to the Cuyahoga County Division of Children and Family Services because the juvenile court properly engaged in the two-prong analysis prescribed by R.C. 2151.414 and clear and convincing evidence supported the court's decision granting permanent custody of the child to the agency.

110397 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE J.R.

110398 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE K.F.W.

Affirmed.

Frank D. Celebrezze, Jr., P.J., Michelle J. Sheehan, J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Standing; bootstrapping; untimely appeal; beyond scope of appeal; App.R. 4; jurisdiction.*

Because appellant's claimed errors were beyond the scope of the appeal, and appellant was attempting to bootstrap time-barred claims, the court was without jurisdiction to consider them.