

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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April 7, 2022

**109494** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JOEL PARKER, Jr.

Affirmed.

Anita Laster Mays, P.J., Kathleen Ann Keough, J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Reagan Tokes Act; separation of powers; due process; constitutionality vagueness.*

**The Reagan Tokes Act is constitutional as it does not violate the separation-of- powers doctrine or appellant's due process rights. The appellant did not raise the issue of the Act being unconstitutionally vague, and therefore, has waived the argument.**

**109583** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v KEIWAUN DANIEL

Affirmed in part, vacated in part.

Decision En Banc:

Sean C. Gallagher, A.J., Mary J. Boyle, Frank Daniel Celebrezze, III, Eileen A. Gallagher, Kathleen Ann Keough, Cornelius J. O'Sullivan, Jr., and Michelle J. Sheehan, JJ., concur;  
Lisa B. Forbes, Eileen T. Gallagher, Emanuella D. Groves, Mary Eileen Kilbane, and Anita Laster Mays, JJ., concur in judgment only.

Decision of the Merit Panel:

Lisa B. Forbes, P.J., Eileen T. Gallagher, J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *R.C. 2929.144; R.C. 2929.14; Reagan Tokes Act; indefinite non-life felony sentence; ripeness; due process; separation of powers.*

**The defendant's sentence imposed under the Reagan Tokes Law is not unconstitutional.**

**109670** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ANTOINE SEALEY, JR.

Vacated and remanded.

Decision En Banc:

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Sean C. Gallagher, A.J., Mary J. Boyle, Frank Daniel Celebrezze, III, Eileen A. Gallagher, Kathleen Ann Keough, Cornelius J. O'Sullivan, Jr., and Michelle J. Sheehan, JJ., concur;  
Lisa B. Forbes, Eileen T. Gallagher, Emanuella D. Groves, Mary Eileen Kilbane, and Anita Laster Mays, JJ., concur in judgment only.

**KEY WORDS: R.C. 2929.144; R.C. 2929.14; Reagan Tokes Act; indefinite non-life felony sentence; ripeness; due process; separation of powers.**

***The defendant's sentence imposed under the Reagan Tokes Law is not unconstitutional.***

**110424** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v THOMAS C. PATTERSON

Affirmed.

Emanuella D. Groves, J., Kathleen Ann Keough, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS: Confrontation Clause; Crim.R. 43(A); Section 10, Article I of the Ohio Constitution resentencing; harmless error.**

***The United States Supreme Court has held that one of the most basic rights guaranteed by the Confrontation Clause is a defendant's correlative right to be present in the courtroom at every stage of the trial. In addition, Crim.R. 43(A) and Section 10, Article I of the Ohio Constitution, mandate a defendant's presence at every stage of the criminal proceedings.***

***Although there is no Confrontation Clause right at sentencing, the broad scope and protection offered by Crim.R. 43 embodies the constitutional guarantee under the Confrontation Clause.***

***Appellant argues that the trial court erred by resentencing him without him being present. However, we find appellant's absence constituted harmless error, in this matter, because appellant suffered no prejudice. To the contrary, the trial court conferred a benefit on appellant by waiving the mandatory drug fine of \$7,500.***

**110451** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MARQUS BYRD

Affirmed.

James A. Brogan, J.,\* Mary J. Boyle, P.J., and Frank Daniel Celebrezze, III, J., concur.  
\*(Sitting by assignment: James A. Brogan, J., retired, of the Second District Court of Appeals.)

**KEY WORDS: Reagan Tokes Law; S.B. 201.**

***Appellant's indefinite sentence imposed under the Reagan Tokes Law is constitutional.***

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**110453** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ANTHONY JONES

**110454** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ANTHONY P. JONES

Affirmed.

Mary Eileen Kilbane, J., and Eileen A. Gallagher, J., concur; Anita Laster Mays, P.J., concurs in judgment only.

**KEY WORDS:** *Substantive due process; fundamental fairness requirement; equal protection rights; R.C. 2152.10; R.C. 2152.12; R.C. 2152.121; juvenile; discretionary transfer; mandatory transfer; adult court; reverse bindover; amenability hearing; rational-basis test; legitimate government purpose; estoppel; Juv.R. 1; R.C. 2152.02; and juvenile court's jurisdiction.*

*Juveniles have no substantive right to an amenability hearing or to have their case returned to the juvenile court system following a discretionary transfer. Absent such rights, appellant's claim of a substantive due process violation lacked merit.*

*After finding appellant met the initial statutory requirements for a discretionary transfer to adult court, the juvenile court completed a full investigation of appellant and held an amenability hearing where appellant and his counsel were present. At the conclusion of the hearing, the juvenile court stated its decision and reasoning to subject appellant to a discretionary transfer. The juvenile court issued a judgment entry that discussed its reasoning for transfer. Based upon these actions, appellant's alleged violation of the fundamental fairness requirement of procedural due process is without merit.*

*The discretionary transfer statute is rationally related to the legitimate government purpose - to protect society from violent offenders and increase punishments for serious juvenile offenders - and, therefore, it does not violate appellant's equal protection rights.*

*The juvenile court acted in accordance with Juv.R. 1, the discretionary transfer statute, and R.C. 2152.02 when it sent, by discretionary transfer, two of appellant's juvenile cases to adult court but retained jurisdiction over appellant's third juvenile case.*

**110633** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DAVID VITUMUKIZA

Affirmed and remanded.

Anita Laster Mays, P.J., Michelle J. Sheehan, J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Crim.R. 11, guilty plea, knowingly, intelligently, voluntarily, R.C. 2929.14, consecutive sentences, Reagan Tokes Law constitutionality.*

*The record demonstrates that the appellant’s plea was made knowingly, intelligently, and voluntarily under Crim.R. 11. The imposition of concurrent sentences was not contrary to law and was an express part of the plea agreement, but the trial court’s failure to journalize the findings that were properly made on the record pursuant to R.C. 2929.14(C)(4) requires a remand to enter a nunc pro tunc entry to conform to the sentencing proceedings. This court’s en banc decision in State v. Delvallie, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470 (Laster Mays, J., concurring in part and dissenting in part) determined that the Reagan Tokes Law is constitutional.*

**110711** BOARD OF TAX APPEALS H ADMIN APPEAL  
 REO INVESTMENTS LLC v CUYAHOGA COUNTY BOARD OF REVISION, ET AL.

Reversed and remanded.

Anita Laster Mays, P.J., Cornelius J. O’Sullivan, Jr., J., and James A Brogan, J.,\* concur.

\*(Sitting by assignment: James A. Brogan, J., retired, of the Second District Court of Appeals.)

**KEY WORDS:** *Board of Tax Appeals; Board of Revision; property valuation.*

*The Board of Tax Appeals erred when it relied on the fiscal officer’s property valuation in lieu of the Board of Revision’s valuation. When the Board of Revision has reduced the value of the property based on the owner’s evidence that value has been held to eclipse the auditor’s original valuation.*

**110737** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
 MOHAMMAD TABBAA v DR. HAZEM NOURALDIN, ET AL.

Reversed and remanded.

Eileen T. Gallagher, J., Anita Laster Mays, P.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Oral contract; written contract; statute of limitations; Savings Statute.*

*Trial court erred in finding that plaintiff’s claim for breach of contract was barred by the statute of limitations where the court applied the statute of limitations applicable to oral contracts even though there was insufficient evidence to determine if the claim for breach of an oral contract had accrued and also because the parties had a written contract.*

## CASE DECISION LIST

**110771** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
SHJ CO. v AVANI HOSPITALITY AND FINANCE LLC, ET AL.

Affirmed.

Cornelius J. O'Sullivan, Jr., J., Anita Laster Mays, P.J., and James A. Brogan, J.,\* concur.

(Sitting by assignment: James A. Brogan, J., retired, of the Second District Court of Appeals.)

**KEY WORDS:** *R.C. 2323.12; 2323.13; cognovit note; Civ.R. 60(B) motion for relief from judgment; App.R. 12; App.R. 16; jurisdiction; R.C. 1343.01 Ohio's usury statute.*

*Trial court did not err in granting cognovit judgment in favor of appellee and in denying appellants' motion for relief from judgment when appellants took out commercial loans and provided no evidence that the loans were consumer loans. Appellants were not entitled to a hearing because the undisputed facts showed that the loans were commercial loans and the trial court expressly found as much. The trial court correctly found that it did not have jurisdiction to consolidate an active case with an inactive case. Ohio's usury statute does not apply because the amount of the loans exceeded \$100,000 and/or were business loans. Appellants' brief does not comply with appellate rules, but cases are best decided on their merits so the court will use its discretion to address appellants' arguments but will not address arguments appellants make that they do not assign as error.*

**110774** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v WALTER CLOUD

Affirmed.

Michelle J. Sheehan, J., Sean C. Gallagher, A.J., and Frank Daniel Celebrezze, III, concur.

**KEY WORDS:** *Reagan Tokes Law; constitutionality.*

*Appellant's sentence imposed under the Reagan Tokes Law is not unconstitutional pursuant to this court's en banc decision in State v. Delvallie, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470.*

**111030** DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE  
PETER RODENO, EXECUTOR OF THE EST. OF DANIEL A. RODENO v  
ALAN MEZENSKI, GUARDIAN OF KAREN L. RODENO

Affirmed.

Eileen A. Gallagher, J., Kathleen Ann Keough, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

**KEY WORDS:** *Divorce decree; Civ.R. 60(B)(5); motion for relief from judgment; evidentiary hearing; abuse of discretion; spousal support; equitable division of property; incompetency; R.C. 3105.18(E); 3105.171(I); action abating upon death; operative facts; Civ.R. 17(B).*

*Trial court did not abuse its discretion in denying motion for relief from judgment pursuant to Civ.R. 60(B)(5) seeking to vacate divorce decree based on claims that spousal support award and property division were inequitable and that wife was incompetent at time divorce was finalized. Civ.R. 60(B)(5) cannot be used to circumvent the statutory requirements of R.C. 3105.18(E) and 3105.171(I) where there was no reservation of jurisdiction in the divorce decree and no express written consent or agreement to the requested modification of property division and spousal support award in divorce decree by both spouses. Case was not one in which trial court could grant the relief sought by Civ.R. 60(B) motion, i.e., rehearing the case on the merits and ordering a more "equitable" property division and spousal support award, because husband died nearly a year before appellant filed Civ.R. 60(B) motion. Death of a party prior to adjudication of the issues in a divorce case causes the action to abate and ends any jurisdiction that a judge has over the case except to dismiss it. Further, appellant did not present sufficient allegations operative facts in his motion and supporting materials establishing grounds for relief under Civ.R. 60(B)(5) or his entitlement to an evidentiary hearing on the motion. Trial court did not abuse its discretion or otherwise err in failing to appoint guardian ad litem to protect wife's interests during the divorce proceedings under Civ.R. 17(B).*