

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 6

April 14, 2022

**110134** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v D.S.

Affirmed.

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

**KEY WORDS:** *Reagan Tokes Act; constitutional; State v. Delvallie, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470.*

**The en banc majority in Delvallie has determined that the Reagan Tokes Act is constitutional. Therefore, appellant's sentence is affirmed.**

**110308** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v HECTOR RIEMER

Affirmed.

Frank Daniel Celebrezze, III, J., Mary J. Boyle, P.J., and Lisa B. Forbes, J., concur.

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

**Appellant's sentence under the Reagan Tokes Law is not unconstitutional. Appellant properly preserved his argument for appeal and was afforded effective assistance of counsel.**

**110355** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DAZSHEA WATKINS

Affirmed and remanded.

Emanuella D. Groves, J., Kathleen Ann Keough, P.J., and Mary Eileen Kilbane, J., concur.

**KEY WORDS:** *Consecutive sentences; findings; incorporated in journal entry; nunc pro tunc; Reagan Tokes Act; constitutional; State v. Delvallie, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470.*

**The trial court made the required findings to support the imposition of consecutive sentences. Further, the evidence in the record supports the trial courts' finding. While the trial court made the requisite statutory findings, and those findings were supported by the evidence in the record, the trial court did not incorporate those findings in its journal entry. However, that error can be corrected by way of a nunc pro tunc.**

## CASE DECISION LIST

(Case 110355 continued)

Finally, our en banc decision in *Delvallie* has determined that the Reagan Tokes Act is constitutional. Therefore, appellant's sentence is affirmed.

Consecutive sentences; findings; incorporated in journal entry; nunc pro tunc; Reagan Tokes Act; constitutional; *State v. Delvallie*, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470.

The trial court made the required findings to support the imposition of consecutive sentences. Further, the evidence in the record supports the trial court's finding. While the trial court made the requisite statutory findings, and those findings were supported by the evidence in the record, the trial court did not incorporate those findings in its journal entry. However, that error can be corrected by way of a nunc pro tunc.

Finally, our en banc decision in *Delvallie* has determined that the Reagan Tokes Act is constitutional. Therefore, appellant's sentence is affirmed.

**110357** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
JERRY M. STERN VICTIM OF NAZI PERSECUTION v ROB OLDHAM PROPERTIES LLC, ET AL.

Affirmed in part; reversed in part, and remanded.

Kathleen Ann Keough, P.J., Eileen A. Gallagher, J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Civ.R. 41; sanction; abuse of discretion; trial order; dismissal; notice; selective enforcement.*

*Based on the entire record, the court abused its discretion to dispose of the counterclaim for failing to strictly adhere to a trial order when arguably no reasonable notice under the circumstances was given, there was no surprise or undue prejudice to the plaintiff, there was no undue delay to the court or proceeding with trial, and the court exercised arbitrary selection of enforcement of its trial order.*

**110514** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v SIERRA TRAVIS

Affirmed.

James A. Brogan, J.,\* Sean C. Gallagher, A.J., and Lisa B. Forbes, J., concur.  
(\*Sitting by assignment: James A. Brogan, J., retired, of the Second District Court of Appeals.)

**KEY WORDS:** *Murder; felonious assault; accident; self-defense; lesser included offense; reckless homicide; bench trial; manifest*

## CASE DECISION LIST

(Case 110514 continued)

weight.

**The trial court did not err in failing to consider appellant's alternative theories of the case, including accident, self-defense, and a lesser included offense. Appellant's convictions were not against the manifest weight of the evidence.**

**110520** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v SAMIYAH BOND

Vacated and remanded.

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

**KEY WORDS: R.C. 2152.10 and 2152.12; mandatory transfer; Crim.R. 11; strict compliance.**

***Appellant's case was transferred from juvenile court to the general division of the common pleas court. Ohio's juvenile mandatory transfer procedures, R.C. 2152.10 and 2152.12, have been determined to be constitutional. Further, the trial court properly conducted a colloquy with appellant on the record and determined that her waiver of a probable cause hearing was made knowingly, intelligently, and voluntarily. Appellant's plea after transfer of the case was invalid because the trial court did not strictly comply with Crim.R. 11(C).***

**110617** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN THE MATTER OF: Z.L.

Affirmed in part, reversed in part, and remanded.

Sean C. Gallagher, A.J., Lisa B. Forbes, J., and James A. Brogan, J.,\* concur.

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

**KEY WORDS: Motion for relief from judgment; child support; Civ.R. 60(B)(2); newly discovered evidence; income; abuse of discretion; shared parenting; best interest; R.C. 3109.04(F); visitation.**

***The juvenile court abused its discretion in denying Father's motion for relief from judgment establishing child support when Father obtained newly discovered evidence regarding Mother's military income that Mother failed to previously disclose and the requirements for obtaining relief pursuant to Civ.R. 60(B)(2) were met. The juvenile court did not abuse its discretion in denying a motion for shared parenting and awarding Father liberal visitation after considering all relevant R.C. factors under R.C. 3109.04(F). Case was remanded to the juvenile court for a recalculation of child***

## CASE DECISION LIST

(Case 110617 continued)

**support and a ruling on Father's outstanding motions.**

**110638** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
DARLENE PRIDE v CITY OF CLEVELAND HEIGHTS NUISANCE ABATEMENT BOARD

Affirmed.

Frank Daniel Celebrezze, III, P.J., Eileen A. Gallagher, J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Administrative appeal; mootness; property already demolished; failure to obtain stay; impossible to grant effectual relief; due process; failure to raise argument before board; waiver; plain error; CHCO 553.03(b); nuisance; emergency order; failure to conduct hearing; R.C. 2506.02; transcript unavailable; R.C. 2506.03; failure to move to submit additional evidence.*

*Appellant's first assignment of error was rendered moot by her failure to seek a stay of the lower court's decision, which allowed the property to be razed. Appellant's second and third assignments of error are overruled. The lower court did not err in finding that appellant had waived the issue of the need to bring legislative action or in declining to conduct a hearing in this matter.*

**110716** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ANTHONY PARKER

Affirmed.

Sean C. Gallagher, A.J., Anita Laster Mays, J., and Frank Daniel Celebrezze, III, J., concur.

**KEY WORDS:** *Robbery; manifest weight; sufficiency of the evidence; credibility.*

*The appellant's convictions for robbery are not against the weight of the evidence solely because the trier of fact accepted the victims' testimony as credible over the defendant's version of the events.*

**110741** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v GRANVILLE WALKER, II

Reversed and remanded.

Kathleen Ann Keough, P.J., and Michelle J. Sheehan, J., concur; James A. Brogan, J.,\* concurs (with separate concurring opinion).

## CASE DECISION LIST

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

**KEY WORDS:** *Domestic violence; prior convictions; enhancement; R.C. 2945.75(B); stipulation; prosecutorial misconduct; closing argument; character evidence; passion and prejudice; jury; fair trial.*

**Absent a stipulation, proof of prior convictions for enhancement purposes must comply with R.C. 2945.75(B). Even though the state did not receive a stipulation and did not comply with R.C. 2945.75(B) the error was not properly preserved on appeal and was not raised for this court to consider. When the prosecutor's comments during closing argument uses improper character evidence, i.e. prior domestic violence convictions, to incite the passion and prejudice of the jury, a defendant is deprived of a fair trial.**

**110786** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
TREASURER OF CUYAHOGA COUNTY, OHIO v 440 HIGH STREET, LLC, ET AL.

Affirmed.

Frank Daniel Celebrezze, III, P.J., Eileen A. Gallagher, J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Foreclosure; Civ.R. 60(B); motion for relief from judgment; confirmation of sale; abuse of discretion; meritorious defense; excusable neglect; hearing.*

**The trial court did not abuse its discretion in denying appellant's motion to vacate the confirmation of the sale of the property without holding a hearing. Appellant failed to demonstrate that it was entitled to relief from judgment under Civ.R. 60(B).**

**110797** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ISAIAH TURNER

Reversed and remanded.

Eileen T. Gallagher, P.J., Emanuella D. Groves, J., and Sylvia A. Hendon, J.,\* concur.

\*(Sitting by assignment: Sylvia A. Hendon, J., retired, of the First District Court of Appeals.)

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

**The trial court erred in declining to impose a sentence under the Reagan Tokes Law.**

## CASE DECISION LIST

**110800** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v SHANDALL THOMAS

Reversed and remanded.

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

**KEY WORDS:** *Qualifying second-degree felony; Reagan Tokes Law; constitutional.*

*The Reagan Tokes Law does not violate the Sixth Amendment right to a jury trial, the separation-of-powers doctrine, or due process rights. The case is remanded to the trial court for resentencing under the law.*

**110878** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ARTHUR SMILEY

Reversed and remanded.

Anita Laster Mays, P.J., and Michelle J. Sheehan, J., concur; Eileen A. Gallagher, J., dissents with separate opinion.

**KEY WORDS:** *Contempt of court; findings of fact.*

*The trial court failed to incorporate any findings of fact for the contempt conviction in its journal entry. Thus, this matter is reversed and remanded to the trial court so that it may enter a written order, setting forth fully, clearly, and specifically the facts out of which the contempt arose.*