

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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April 21, 2022

110467 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DAVID E. ROBINSON

Affirmed and remanded.

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

KEY WORDS: *Endangering children; obstructing official business; Anders brief; motion to withdraw; ineffective assistance of counsel; guilty plea; coercion; Crim.R. 11; prosecutorial misconduct; plain error; invited error; speedy trial; waiver; restitution; R.C. 2929.18; ability to pay; sentence; due process; judicial bias; contrary to law; R.C. 2953.08; R.C. 2929.11; R.C. 2929.12; R.C. 2929.14.*

Appointed counsel's motion to withdraw is granted. Appellant's endangering children and obstructing official business convictions and the trial court's sentence are affirmed.

Appellant's guilty plea was knowingly, intelligently, and voluntarily entered; it was not improperly coerced by the prosecution. Appellant was not denied his constitutional right to effective assistance of counsel. The prosecutor's remarks at sentencing did not constitute prosecutorial misconduct, and appellant failed to meet his burden of demonstrating plain error. Appellant was not denied his constitutional right to a speedy trial. The trial court's five-year prison sentence is not contrary to law, and the trial court did not commit plain error in ordering appellant to pay restitution.

The trial court's sentencing journal entry contains a clerical error with respect to the total amount of restitution. The matter is remanded to the trial court for the limited purpose of issuing a nunc pro tunc journal entry accurately reflecting the amount of restitution agreed upon by the parties.

110547 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v LARRY STEWART

Affirmed.

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

KEY WORDS: *Nunc pro tunc; aggravated murder; R.C. 2929.03(D)(2); invited error; harmless error; Crim.R. 43; Crim.R. 52.*

The trial court's issuance of a nunc pro tunc entry imposing a sentence for the aggravated murder count of life imprisonment with parole eligibility after serving 30 full years of imprisonment was legally correct and was procured upon the request of the defendant, rendering any error to be invited as a matter of law.

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110631 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ROBERT ANDERSON

Affirmed.

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

KEY WORDS: *Preindictment delay, guilty plea.*

Appellant's plea of guilty waived the argument that he was prejudiced by the state's preindictment delay.

110657 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
PAUL FOWERBAUGH v DAVID SLIMAN

Affirmed.

Eileen A. Gallagher, P.J., Michelle J. Sheehan, J., and James A. Brogan, J.,* concur.

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

KEY WORDS: *Summary judgment; Civ.R. 56; fraudulent misrepresentation and concealment; R.C. 5302.30; residential property disclosure form; caveat emptor; material defects; building and housing code violations; patent defects; latent defects; attorney fees; punitive damages; R.C. 2315.21(C).*

Trial court did not err in granting summary judgment as to liability in favor of buyers on their fraud claim based on seller's material misrepresentations in residential property disclosure form. Even assuming that certain of the defects/code violations at issue were patent defects that were observed (or should have been observed) by buyers, that did not preclude seller from liability for, and for buyers from properly recovering damages resulting from, seller's fraudulent concealment of and misrepresentations relating to any material, latent defects/code violations in the residential property disclosure form.

Trial court did not err or abuse its discretion in awarding buyers their attorney fees after finding that they were entitled to recover punitive damages. Attorney fees may be awarded to the prevailing party as an element of compensatory damages when the factfinder finds that punitive damages are warranted. Seller did not challenge trial court's punitive damages award or its determination that buyers were entitled to recover punitive damages on appeal and did not otherwise point to anything in the record that showed that trial court's finding that seller exhibited a conscious disregard for the rights and safety of buyers that had a great probability of causing substantial harm was not supported by competent, credible evidence.

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110664 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOSEPH R. NOAH

Affirmed.

Kathleen Ann Keough, P.J., Lisa B. Forbes, J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Felonious assault; sufficient evidence; serious physical harm; fractured nose.*

Appellant's conviction for felonious assault supported by sufficient evidence where the evidence showed that the victim suffered serious physical harm, i.e., a fractured nose.

110706 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LEDON HOWARD II

110897 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LEDON HOWARD II

Affirmed in part, vacated in part, and remanded.

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

KEY WORDS: *Felony sentence; third degree; trafficking; financial sanctions; mandatory fine; indigency; affidavit of indigence; ability to pay; R.C. 2929.18(A)(3); R.C. 2929.18(B)(1); R.C. 2929.19(B)(5); ineffective assistance; prejudice; nunc pro tunc; fine.*

In one of the underlying cases, affirmed trial court's imposition of a \$5,000 mandatory fine where the record showed the trial court complied with R.C. 2929.19(B)(5) and considered the defendant's present and future ability to pay the mandatory fine before imposing the financial sanction in accordance with R.C. 2929.18. Ineffective assistance of counsel was not established for counsel's failure to file the defendant's affidavit of indigence when the affidavit was signed at the sentencing hearing and reviewed by the trial court. In the other underlying case, vacated the trial court's nunc pro tunc entry that was improperly used to include a fine never imposed in that case. Remanded the cases with instructions to correct the record.

110743 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MICHELLE RODRIGUEZ v CATHOLIC CHARITIES CORPORATION, ET AL.

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Affirmed and remanded.

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: *Not-for-profit religious organization; independent contractor; political subdivision; summary judgment; agent/employee; contracts.*

Catholic Charities, a not-for-profit religious organization, is not a political subdivision. Catholic Charities entered into five consecutive yearly contracts to provide services as an independent contractor. It performed its services as an independent contractor, not as an agent or employee of a political subdivision. Therefore, Catholic Charities was not entitled to summary judgment on the basis of statutory immunity.

110782	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v RICHARD MORRIS			

Affirmed.

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

KEY WORDS: *Sexual battery; R.C. 2907.03; R.C. 2903.11; withdraw plea; Crim.R. 32.1; App.R. 16(A)(7); conflict of interest; consecutive sentences; R.C. 2929.14(C)(4); R.C. 2953.08.*

The trial court did not err by denying the defendant's motion to withdraw his guilty plea, nor was the guilty plea the product of ineffective assistance of counsel or a conflict of interest between the defendant and his counsel. The defendant has not demonstrated that the consecutive sentences were clearly and convincingly not supported by the record.

110790	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v KENITH TONEY, JR.			

Affirmed.

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

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

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

Appellant's sentence pursuant to Reagan Tokes was not a violation of his constitutional rights.

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110798 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ZERIAN VINCE

Reversed and remanded.

James A. Brogan, J.,* Eileen A. Gallagher, P.J., and Michelle J. Sheehan, 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; right to trial by jury; separation-of-powers doctrine; due process; en banc; indefinite sentencing.*

The trial court erred when it failed to impose a sentence pursuant to the Reagan Tokes Law.

110799 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOHN A. MCGRAW

Affirmed.

Sean C. Gallagher, A.J., Frank Daniel Celebrezze, III, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Crim.R. 32.1; postsentence motion to withdraw plea; res judicata; authority to offer relief.*

The trial court did not err in denying the defendant's fourth postsentence motion to withdraw his guilty pleas because the motion was precluded under the doctrine of res judicata and, in addition, under State v. Ketterer, 126 Ohio St.3d 448, 2010-Ohio-3831, 935 N.E.2d 9, ¶ 59, the trial court lacked authority to vacate the guilty pleas that had been affirmed in the defendant's direct appeal.

110819 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v BRIAN BUTTS

Affirmed and remanded.

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

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

KEY WORDS: *Plain error; community-control sanctions violation hearing; due process; substantial evidence; admission to a community-control violation; neutral and detached trial court; absence of prosecutor at violation hearing; the Reagan Tokes Law;*

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(Case 110819 continued)

right to trial by jury; separation-of-powers doctrine; nunc pro tunc; clerical error.

The defendant's due process rights were not violated when the trial court acted as a neutral and detached hearing body and the defendant's admission to his community-control sanctions violation negated the need to introduce substantial evidence in support of the violation. The trial court did not err in failing to require a state representative's presence at the violation hearing. The defendant's indefinite sentence imposed under the Reagan Tokes Law did not violate his constitutional rights. Remand was required for the trial court to issue a nunc pro tunc judgment entry to correctly set forth the court's statements made in open court and reflected in the court transcript.

110922 CLEVELAND MUNI. G CIVIL MUNI. & CITY
NNAETO AMUJIOGU v MICHAEL OKO

Dismissed.

Cornelius J. O'Sullivan, Jr., J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: Forcible entry and detainer; tenant vacated residence; dismissal of appeal.

A forcible entry and detainer action decides the right to immediate possession only. If the property has been restored to the landowner, the action becomes moot because there is no further relief that can be granted to the landowner. Appellant states that he has vacated the property and therefore there is no remedy this court can grant. The appeal is moot and dismissed.

111029 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN THE MATTER OF: J.A., JR.

Affirmed.

Frank Daniel Celebrezze, III, P.J., Michelle J. Sheehan, J., and Lisa B. Forbes, J., concur.

KEY WORDS: Termination of parental rights; permanent custody; R.C. 2151.414; clear and convincing evidence; best interest of the child; abuse of discretion; consideration of statutory factors; recommendation of guardian ad litem; extension of temporary custody; R.C. 2151.353; R.C. 2151.415.

The juvenile court's judgment was not against the manifest weight of the evidence. The granting of permanent custody was in the best interest of the child and an extension of temporary custody was not warranted.