

June 16, 2022

110595 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ONAJE NICHOLSON

Affirmed in part, vacated in part and remanded.

Eileen A. Gallagher, P.J., Mary Eileen Kilbane, J., Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Mandatory transfer; R.C. 2152.12; probable cause; more than a mere suspicion of guilt; Batson challenge; peremptory challenge; racially discriminatory manner; Crim.R. 30(A); Crim.R. 52(B); alleged defective jury instruction; plain error; Crim.R. 29(A); motion for acquittal; sufficiency of the evidence; manifest weight of the evidence; reverse bindover; R.C. 2152.121(B)(3); amenability determination; R.C. 2152.12(D)-(E) factors; Reagan Tokes Law.*

Juvenile court did not err in granting state's motion for mandatory transfer to general division pursuant to R.C. 2152.12(A)(1)(a)(i). State presented sufficient credible evidence, amounting to more than a mere suspicion of guilt, to support juvenile court's finding that there was probable cause to believe that appellant committed acts that would constitute attempted murder as charged in juvenile court complaint.

Trial court's decision overruling Batson challenge to state's exercise of peremptory challenge to excuse prospective African American juror was not clearly erroneous; state indicated that it excused prospective juror due to a recent carrying-a-concealed-weapon charge, the prospective juror's statement that he knowingly disregarded the concealed carry law, the number of firearm offenses in the case and the prospective juror's conduct while the prosecutor was talking, which the trial court observed. No reversible error based on admission of comments by codefendant relating to codefendant's involvement in an unrelated homicide case where comments made no mention of appellant, trial court gave curative instruction drafted by appellant's counsel and no prejudice was shown.

Trial court did not commit plain error in referencing uncharged offenses in jury instruction relating to participating in a criminal gang; appellant did not show that alleged defective jury instruction affected jury's verdict.

State failed to present sufficient evidence for a reasonable jury to find appellant guilty of one count of failure to comply where witnesses could not state whether appellant was the driver of the vehicle attempting to evade police. Appellant's remaining convictions for participating in a criminal gang, felonious assault, failure to comply and other gun-related offenses were supported by sufficient evidence and were not against the manifest weight of the evidence.

In reverse bindover, juvenile court did not abuse its discretion in transferring case back to the general division for invocation of the

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previously imposed sentences. A rational, factual basis existed for the juvenile court's findings with respect to the R.C. 2152.12(D) and (E) factors and its determination that appellant was not amenable to care or rehabilitation within the juvenile system and that the safety of the community required that he be subject to adult sanctions.

Appellant's constitutional challenges to the Reagan Tokes Law were rejected in *State v. Delvallie*, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.). Trial court did not err in applying Reagan Tokes Law to participating-in-a-criminal-gang charge where the date range for the conduct for which appellant was found guilty included a time period after the Reagan Tokes Law became effective.

110692	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v DWIGHT QUINN			

Affirmed.

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

KEY WORDS: *Joinder of indictments; Crim.R. 8(A); Crim.R. 14; plain error; failure to comply is probative of guilt; Sixth Amendment speedy trial rights; Evid.R. 404(B) other acts testimony; Evid.R. 801(D)(2)(e) admissions by co-conspirator.*

Joinder of indictments was proper where the state showed that two or more acts are connected together and defendant failed to show prejudice resulting from joinder. Delay in bringing defendant to trial resulted from Covid-19 pandemic continuances and defense requested continuances, which did not unduly prejudice the defendant. Therefore, his constitutional speedy trial rights were not violated. An isolated remark by a detective about defendant's violent history, which was elicited by defense counsel on cross-examination, did not violated Evid.R. 404(B). Codefendant's statement that he was also a victim of a robbery, but he did not know the identity of the offender, was admissible under Evid.R. 801(D)(2)(e) as a statement by a co-conspirator, because it was made in an effort to conceal the crime.

110732	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v DARNELLE HURT			

Affirmed in part, reversed in part, and remanded.

Kathleen Ann Keough, J., and Cornelius J. O'Sullivan, Jr., J., concur; Anita Laster Mays, P.J., concurs in part and dissents in part (with separate opinion).

KEY WORDS: *Jury instructions; murder; voluntary manslaughter; aggravated assault; involuntary manslaughter; duty to retreat; flight*

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instruction; sufficiency of the evidence; self-defense.

Defendant's convictions for felony murder, voluntary manslaughter, and felonious assault reversed and case remanded for new trial where trial court improperly instructed the jury that it could find the defendant guilty of both murder and voluntary manslaughter, and did not instruct the jury on the inferior-degree offense of aggravated assault with respect to the felonious assault counts and involuntary manslaughter regarding the felony murder court; trial court properly gave a flight instruction; trial court did not err in not instructing the jury on amended R.C. 2901.09 regarding the defendant's duty to retreat because the statute was amended while defendant's case was pending and, therefore, the substantive provisions of the former law applied to defendant's case; defendant's convictions for felony murder, voluntary manslaughter, and felonious assault were supported by sufficient evidence where the defendant conceded that by asserting self-defense, he admitted that he knowingly killed the victim when he shot him and the state produced sufficient evidence to demonstrate that defendant was not acting in self-defense.

110812	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v DJUAN D. JAMES			

Affirmed in part, vacated in part, and remanded.

Mary J. Boyle, J., and Emanuella D. Groves, J., concur; Sean C. Gallagher, A.J., dissents in part (with separate opinion).

KEY WORDS: Aggravated assault; aggravated menacing; inferior offenses; lesser-included offenses; jury instruction; plain error; Civ.R. 52; weight of the evidence; sufficient evidence; ineffective assistance of counsel.

Judgment is affirmed in part, vacated in part, and remanded. The defendant's convictions for aggravated menacing are affirmed. The defendant's conviction for the inferior offense of aggravated assault is vacated and remanded for a new trial. The court's jury instructions on the inferior offense constituted plain error because a finding of not guilty of felonious assault necessarily precludes a finding of guilty of aggravated assault as an inferior offense of felonious assault. There is sufficient evidence sustaining the finding of guilt on the aggravated menacing charges, and the charges are not against the weight of the evidence. In addition, defense counsel was not ineffective.

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110864 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
DONALD TECCO v ICONIC LABS LLC, ET AL.

Affirmed.

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

KEY WORDS: *Summary judgment; breach of contract; executory contract; review; partnership; essential terms; reasonably certain and clear.*

Upheld trial court's decision to grant summary judgment in favor of appellees on appellant's claim for breach of contract and/or breach of an executory contract to form a partnership. Appellant failed to put forth evidence demonstrating a meeting of the minds occurred regarding the essential terms of an executory agreement to form a partnership, and a review of the record showed the essential terms of any contemplated agreement were not reasonably certain and clear. An appellate court limits its review to issues actually decided by the trial court.

110895 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RONDELL BLALOCK

Vacated and remanded.

Mary J. Boyle, J., Frank Daniel Celebrezze, III, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Plain error; R.C. 2903.02(A); murder; R.C. 2903.03(A); voluntary manslaughter; inferior offense.*

Appellant's convictions are vacated, and the case is remanded for a new trial. The trial court committed plain error by convicting appellant of murder when it also found him guilty of the inferior offense of voluntary manslaughter.

110941 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v DARRYL W. WILLIAMS

Affirmed.

Cornelius J. O'Sullivan, Jr., J., Anita Laster Mays, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Motion to withdraw plea; petition for postconviction relief; final, appealable order; findings of fact and conclusions of law.*

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The failure to issue findings of fact and conclusions of law, when required, is not a jurisdictional impediment to appealing the denial of a postconviction relief petition. State ex rel. Penland v. Dinkelacker, 162 Ohio St.3d 59, 2020-Ohio-3774, 164 N.E.3d 336, ¶ 3, overruling State ex rel. Ferrell v. Clark, 13 Ohio St.3d 3, 469 N.E.2d 843 (1984), and State v. Mapson, 1 Ohio St.3d 217, 438 N.E.2d 910 (1982).

Findings of fact and conclusions of law are not required when a trial court denies a motion to withdraw a plea.

The trial court did not abuse its discretion by denying appellant's postsentence motion to withdraw his plea without a hearing.

Appellant's petition for postconviction relief was untimely and not subject to the exceptions set forth under R.C. 2953.23(A) for untimely petitions. The trial court did not abuse its discretion by denying appellant's petition without a hearing and without issuing findings of fact and conclusions of law.

110977	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v A.M.			

Affirmed.

Cornelius J. O'Sullivan, Jr., J., Anita Laster Mays, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: Child endangering R.C. 2919.22; tampering with evidence R.C. 2921.12; failure to report a crime R.C. 2921.22.

There was sufficient evidence to support appellant's convictions for child endangering and tampering with evidence when the evidence showed that appellant knew about the hidden camera her husband used to video record her minor child, failed in her duty to protect her child from her husband, and deleted or worked with others to delete the videos her husband had taken of her child. Her conviction for child endangering was also not against the manifest weight of the evidence. There is no spousal privilege in the child endangering statute, and appellant was not charged with a failure to report a crime.

110980	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v DEVIN MCGEE			

110981	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v DEVIN LEVELL MCGEE			

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Affirmed.

Michelle J. Sheehan, P.J., Cornelius J. O'Sullivan, Jr., J., and Mary J. Boyle, J., concur.

KEY WORDS: *Motion to discharge counsel; motion to withdraw plea; abuse of discretion; ineffective assistance of counsel; consecutive sentences; R.C. 2929.14(c)(4).*

Appellant was convicted after entering into a plea bargain with the state of Ohio. The trial court did not abuse its discretion in denying his motions for discharge of counsel and to withdraw his plea where appellant was general in voicing his dissatisfaction with counsel, was informed of the maximum penalties he faced, understood the maximum penalties he faced, and stated to the trial court that he was satisfied with counsel's representations. Appellant did not suffer ineffective assistance of counsel where counsel did not file a motion to withdraw plea before sentencing where he did not show a probability that the outcome would be different. Finally, the trial court stated the consecutive findings on the record.

111005	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v SIRJUAN STEARNS, JR.			
111010	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v SIRJUAN STEARNS, JR.			
111011	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v SIRJUAN STEARNS, JR.			
111012	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v SIRJUAN STEARNS, JR.			
111013	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v SIRJUAN STEARNS, JR.			

Affirmed.

Sean C. Gallagher, A.J., Anita Laster Mays, J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Jointly recommended sentence; guilty plea; R.C. 2953.08(D); appellate sentencing review.*

A jointly recommended sentence imposed by the trial court under R.C. 2953.08(D) cannot be reviewed on appeal, and even if the statute did not preclude such review. R.C. 2953.08(G)(2)(a) does not provide a basis for an appellate court to modify or vacate a sentence based on the lack of support in the record for the trial court's conclusions under R.C. 2929.11 and 2929.12.

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111155 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: A.M.N.

Affirmed.

Lisa B. Forbes, J., Michelle J. Sheehan, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: Request for continuance; abuse of discretion.

We cannot say that the juvenile court abused its discretion by denying Father's counsel's eleventh-hour request for a continuance. Accordingly, Father's sole assignment of error is overruled.