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Court of Appeals, Eighth Appellate District

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June 30, 2022

109598 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DEMARCUS SANDERS

Affirmed.

Eileen T. Gallagher, J.; Mary Eileen Kilbane, J., concurs in judgment only; Anita Laster Mays, P.J., dissents (with separate opinion).

KEY WORDS: *Insanity; wrongfulness; mental disease; defect; expert; prior calculation and design; plan; purpose; expert; credibility; weight; sufficient; evidence.*

The defendant's convictions were supported by sufficient evidence and are not against the manifest weight of the evidence. The state presented sufficient evidence that defendant purposely caused the victim's death with prior calculation and design. The trial court's determination that defendant did not satisfy his burden of proof to establish a NGRI defense was not against the manifest weight of the evidence.

110415 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
BRIAN H. SOLOMON v DAWN M. SOLOMON, ET AL.

Reversed and remanded.

Michelle J. Sheehan, P.J., Lisa B. Forbes, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *R.C. 2735.01(A); standard of review; ex parte appointment of receiver; irreparable harm, clear and convincing evidence necessary to appoint receiver; equity.*

Husband and wife live outside Ohio and own real property in Cuyahoga County as joint tenants in common with a right of survivorship. While divorce proceedings were proceeding in Mexico, husband filed, among other causes of action, an action for partition and sought the appointment of a receiver. The trial court had subject-matter jurisdiction of the case, and the trial court had authority to consider the motion to appoint a receiver pursuant to R.C. 2735.01(A) ex parte. The trial court relied on the unanswered allegations of the complaint, requests for admissions, and appointed a receiver ex parte. The appellate court reviews an order appointing a receiver for an abuse of discretion. A trial court may appoint a receiver ex parte under R.C. 2735.01(A)(1) where there is clear and convincing evidence that property is in danger of being lost, removed, or materially injured and where the party seeking the receiver would suffer irreparable harm. Under R.C. 2735.01(A)(7), the trial court may appoint a receiver in all cases in which equity allows. The record did not contain clear and convincing evidence that the property was subject to loss, removal, or would be

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materially injured or that husband would suffer irreparable harm without the appointment of a receiver. Further, the record did not contain clear and convincing evidence that necessitated the appointment of a receiver in equity.

110579 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ELAINE R. MILONE, INDIVIDUALLY AND AS EXECUTRIX OF v
AII ACQUISITION CORPORATION LLC, ET AL.

Affirmed.

Lisa B. Forbes, P.J., Emanuella D. Groves, J., and Sylvia S. Hendon, J.,* concur.

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

KEY WORDS: Summary judgment; asbestos-related injury; Evid.R. 602; Evid.R. 701; personal knowledge.

Appellant's depositions did not demonstrate that he had the requisite personal knowledge to testify whether material he encountered during his time as a furnace repairman was asbestos under Evid.R. 602 and 701. Accordingly, the trial court did not err in granting summary judgment to appellee because appellant had not demonstrated that he was exposed to asbestos manufactured, supplied, installed, or used by appellee.

110651 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: C.C.

Reversed and remanded.

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

KEY WORDS: Juvenile; disposition; serious youthful offender; indictment; complaint; bail; jury trial; continuance; pandemic; administrative order; speedy trial; tolling.

The juvenile court erred by dismissing the juvenile-offender's SYO indictment on speedy-trial grounds.

110659 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MUNICIPAL CONSTRUCTION EQUIPMENT OPERATORS' LABOR v
CLEVELAND OHIO AND ITS CIVIL SERVICE COMMISSION

Affirmed.

Kathleen Ann Keough, P.J., Eileen A. Gallagher, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Declaratory judgment; summary judgment; minimum qualifications; eligibility list; city charter.*

Trial court did not err in granting summary judgment in favor of the city and its civil service commission because the record demonstrated that the successful candidate possessed the minimum qualifications to be included on the eligibility list. As such, it was proper for the trial court to declare that the city and its commission did not violate the city charter.

110722	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JARON HEARD			

Affirmed.

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

KEY WORDS: *Felonious assault; surveillance camera footage; authentication of video evidence; chain of custody; sufficiency of evidence; manifest weight of evidence.*

Judgment affirmed. There is sufficient evidence to sustain appellant's convictions, and his convictions are not against the manifest weight of the evidence. The nightclub's surveillance cameras captured appellant entering the venue wearing a green sweatshirt, with a large distinctive ornamental "X" adorning the back of the garment, as well as the embellishments on the sleeve. Appellant's face was clearly visible. The surveillance cameras captured the shooting, from three different angles, wherein the appellant is easily identified as the shooter by his unique sweatshirt. The detective testified that he saw no one else on the surveillance footage wearing the same sweatshirt as appellant's.

The thumb drive containing footage from the surveillance camera was properly authenticated. The general manager, who was present on the night of the shooting and regularly worked the security system, reviewed the footage with the detective. The general manager testified that the footage on the thumb drive accurately represented what the surveillance camera captured that night. Additionally, the general manager, in conjunction with the owner of the nightclub, copied the contents of the surveillance cameras onto a thumb drive and provided it to the detective. As such, we find nothing improper about the chain of command.

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110840 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAVIER JONES

Affirmed.

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

KEY WORDS: *Manifest weight of the evidence; witness intimidation; impact of spectator's actions on trial; Crim.R. 52(B); plain error; R.C. 2945.29; Crim.R. 24(G); removal of juror from deliberations; Reagan Tokes Law.*

Judgment is affirmed. The convictions are not against the weight of the evidence because two witnesses separately identified the appellant as the shooter. The trial court did not abuse its discretion by admitting testimony that witnesses feared retaliation and had received threats shortly before testifying, as well as a photo taken during trial identifying appellant by a nickname known to the witnesses. The trial court instructed the jury to consider this evidence solely for the purposes of credibility and identification. The trial court also did not commit plain error by removing a juror for confrontational behavior toward other jurors during jury deliberations. The Reagan Tokes Law is constitutional. Therefore, appellant's sentence under the Reagan Tokes Law is valid.

110841 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CURTIS BOLDEN

Affirmed and remanded.

Kathleen Ann Keough, P.J., Eileen A. Gallagher, J., and Mary J. Boyle, J., concur.

KEY WORDS: *Child pornography; R.C. 2929.11; R.C. 2929.12; R.C. 2929.14(C)(4); consecutive sentences; Reagan Tokes Law; constitutional; nunc pro tunc.*

Trial court properly considered all of the relevant factors found in R.C. 2929.11 and 2929.12 in imposing nonmaximum individual sentences. The sentences were supported by the record. Trial court made all necessary findings prior to imposing consecutive sentences. The findings were supported by the record. The Reagan Tokes Law is constitutional. The trial court properly advised the defendant at sentencing of the possible maximum term under the Reagan Tokes Law, but the sentence was not completely journalized. This clerical mistake can be corrected nunc pro tunc to accurately reflect the trial court's sentence imposed regarding the application of the Reagan Tokes Law.

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110890 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v BRANDON DAVIDS

Affirmed and remanded.

Mary Eileen Kilbane, J., and Lisa B. Forbes, J. concur; Sean C. Gallagher, A.J., concurs in judgment only with separate opinion.

KEY WORDS: *Aggravated burglary; felonious assault; having a weapon while under disability; voir dire; cause; motion to withdraw as counsel; character evidence; Evid.R. 404; merger; R.C. 2941.25; Reagan Tokes; consecutive firearm specifications; sentencing entry; clerical error; nunc pro tunc; speedy trial.*

The court did not abuse its discretion when it removed a juror. The court did not err when it denied defense counsel's motion to withdraw. The admission of witness testimony regarding the witnesses's relationship with the appellant was not unfairly prejudicial. The aggravated burglary and felonious assault crimes were not allied offenses of similar import. The indefinite sentence pursuant to Reagan Tokes did not violate appellant's constitutional rights. The court did not err when it imposed consecutive firearm specifications. Appellant's right to a speedy trial was not violated. Where the sentencing journal entry fails to reflect what occurred in open court at the sentencing hearing, the appropriate remedy is a nunc pro tunc entry.

110940 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
JERRY M. STERN VICTIM OF NAZI PERSECUTION v ROB OLDHAM PROPERTIES LLC, ET AL.

Affirmed.

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

KEY WORDS: *Res judicata; postjudgment; subject-matter jurisdiction; jurisdiction over the particular case; receivership.*

Administrative judge acted within his discretion to handle case assigned to another judge where good cause was shown, and the rules of superintendence and local rule gave the administrative judge broad discretion to control and manage the docket.

Motion to appoint receiver was not barred by res judicata where receivership statute allowed appointment of receiver to effectuate judgment, and trial court always retains jurisdiction to enforce its properly issued orders.

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110944 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TROY SHARP

Affirmed.

Mary J. Boyle, J., Kathleen Ann Keough, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Purposes and principles of felony sentencing; R.C. 2929.11; seriousness and recidivism factors; R.C. 2929.12; Reagan Tokes Law; ineffective assistance of counsel.*

Appellant's sentence is affirmed. The sentence is within the statutory range, and the trial court considered the relevant statutory factors when sentencing appellant. The Reagan Tokes Law is constitutional. Therefore, appellant's sentence under the Reagan Tokes Law is valid, and trial counsel's failure to object to the constitutionality of the Reagan Tokes Law does not constitute ineffective assistance of counsel.

110999 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
J.A.C. v A.L., ET AL.

Reversed, vacated, and remanded.

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

KEY WORDS: *Civil stalking protection order; statutory remedy; authority; allegation; vacate.*

The trial court lacked authority to impose restrictions on the petitioner and respondents' conduct when the court found the requirements for a civil stalking protection order were not proven by a preponderance of the evidence.

111065 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TIMOTHY DARDEN

Reversed and remanded.

Mary J. Boyle, J., Eileen T. Gallagher, J., concurs; Mary Eileen Kilbane, P.J., concurs in judgment only.

KEY WORDS: *Reagan Tokes; sentence; constitutional; State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.).*

Defendant's sentence is reversed and the matter is remanded for a resentencing hearing pursuant to this court's en banc decision in

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Delvallie. The trial court erred when it declined to sentence the defendant under the Reagan Tokes Act, finding the Act unconstitutional.

111081 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: S.P., ET AL.

Affirmed.

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

KEY WORDS: Parental rights; permanent custody; manifest weight of the evidence; R.C. 2151.414; clear and convincing evidence; best interests of the child; legal custody; R.C. 2151.353(A)(3).

The record contains clear and convincing evidence to support the juvenile court's finding that the children were in the agency's custody for 12 months or longer for a consecutive 22-month period and that it was in the best interests of the children to grant permanent custody to the agency. The juvenile court's grant of permanent custody of the siblings to the agency was not against the manifest weight of the evidence.

Additionally, the record contains sufficient evidence to support the juvenile court's decision to deny legal custody to the children's paternal grandmother.

111221 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: L.J., ET AL.

Affirmed.

Cornelius J. O'Sullivan, Jr., J., Kathleen Ann Keough, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: Motion to dismiss, R.C. 2151.353(A); permanent custody, R.C. 2151.414(B); best interest of the children, R.C. 2151.414(D).

The trial court did not err in denying appellant's motion to dismiss when appellant waived the 90-day statutory time limit. The agency's exhibits were properly admitted into evidence under Evid.R. 804(B) and 902(4) as public records and properly considered by the court as previous adjudications on the four children and their two siblings. Clear and convincing evidence supported the trial court's decision to grant permanent custody of the children to the agency and the decision was not against the manifest weight of the evidence when the mother has serious substance abuse problems, mental health issues, lacked housing and employment, and had not made substantial progress on her case plan. The children's fathers did not participate in the proceedings and were not a party to the appeal.