

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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March 3, 2022

109443	COMMON PLEAS COURT	A	CRIMINAL C.P.
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STATE OF OHIO v RUSSELL PARSONS

Affirmed.

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

KEY WORDS: *Purposes and principles of felony sentencing; R.C. 2929.11; seriousness and recidivism factors; R.C. 2929.12; constitutionality of the Reagan Tokes Act; S.B. 201; failure to object to sentence.*

Trial court properly considered the purposes, principles, and factors of felony sentencing under R.C. 2929.11 and 2929.12 when sentencing appellant to 7 to 8.5 years in prison. Appellant failed to object to the constitutionality of the Reagan Tokes Act in the trial court and therefore waived his constitutional challenge to the indefinite portion of his sentence on appeal. Appellant's sentence is affirmed.

109675	COMMON PLEAS COURT	A	CRIMINAL C.P.
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STATE OF OHIO v DAVID FIELDS

109680	COMMON PLEAS COURT	A	CRIMINAL C.P.
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STATE OF OHIO v DAVID FIELDS

Affirmed.

Lisa B. Forbes, J., Kathleen Ann Keough, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Joinder; indictments; severance; plain error; Crim.R. 8; Crim.R. 13; Crim.R. 14 right to be present; Confrontation Clause; Sixth Amendment; Crim.R. 43; waiver; disruptive; sufficiency of the evidence; circumstantial evidence; direct evidence; manifest weight of the evidence; ineffective assistance of counsel; cross-examination; competency; cumulative error; consecutive sentences.*

Appellant failed to demonstrate how he was prejudiced when the trial court joined his three separate indictments for one trial and did not sever them once the crimes relating to one of the indictments were dismissed after the close of the state's case. The trial court did not violate the appellant's Sixth Amendment right to be present at trial when appellant was removed from the courtroom after he continuously disrupted trial proceedings. The state produced sufficient direct and circumstantial evidence to sustain convictions for each of the appellant's crimes. Further, the jury did not find the appellant guilty against the manifest weight of the evidence. Appellant's trial counsel's cross-examination, decision not to seek

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severance, and not renew the issue of competency were all decisions of trial strategy and did not rise to the level of ineffective assistance. Because we did not find error in any of appellant's assignments of error, appellant was not deprived of a fair trial under the cumulative error doctrine. Finally, the trial court did not err in imposing consecutive sentences because the trial court made the requisite statutory findings and those findings were supported by evidence in the record.

109822 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SANTANA CAMPBELL

Affirmed.

Mary J. Boyle, P.J., Sean C. Gallagher, A.J., and Eileen A. Gallagher, 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.

110264 BOARD OF TAX APPEALS H ADMIN APPEAL
SPIRIT MASTER FUNDING IX, LLC, ET AL. v
CUYAHOGA COUNTY BOARD OF REVISION, ET AL.

Reversed and remanded.

Kathleen Ann Keough, J., Sean C. Gallagher, A.J., and Anita Laster Mays, J., concur.

KEY WORDS: Unencumbered fee simple estate; appraisal; tax appeal.

Board of Tax Appeals did not comply with this court's mandate to weigh and address the appraisal evidence in determining the unencumbered fee simple estate for the relevant tax year. The BTA's summary denial of the appraiser's testimony and appraisal does not represent full consideration as required under the law.

110339 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DONNA SANTIAGO v ROBERT COSTANZO

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110343 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DONNA SANTIAGO v ROBERT COSTANZO, ET AL.

Affirmed.

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

KEY WORDS: *Insurance policy; interpretation of terms; plain meaning; summary judgment.*

Summary judgment was appropriate to insurer who was not required to provide a defense or coverage for a claim based upon a dog bite where the policy excluded coverage for any bodily injury caused by a dog with a prior history of causing "bodily injury to a person." The language of the policy was not ambiguous and the exclusion would apply where the prior history of causing injury was to the homeowner himself. Further, the plain meaning of the policy did not necessitate a determination as to the extent the homeowner's actions contributed to the prior injury caused by his dog.

110551 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: A.M.

Affirmed and remanded.

Frank D. Celebrezze, Jr., P.J., Mary Eileen Kilbane, J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Final appealable order; appellate jurisdiction; disposition of all counts; refer to other count; merger; hearsay; text messages; plain error; failure to object; abuse of discretion; prior statement of witness; Evid.R. 801(D)(1); ineffective assistance of counsel.*

The trial court did not err in admitting text messages by the victim because they did not constitute hearsay under Evid.R. 801(D)(1), and appellant's trial counsel was not ineffective for failing to object to text messages that were admissible. However, all three counts should have been merged for purposes of disposition, and this matter is remanded for redispotion.

110574 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DARREN ZECK, ET AL. v SMITH CUSTOM HOMES & DESIGN, LLC

Affirmed.

Mary J. Boyle, J., Mary Eileen Kilbane, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Arbitration; arbitration award; arbitrator; R.C. 2711.10; vacate award; exceed authority; essence of the agreement; de novo review.*

The trial court's denial of appellant's application to vacate the arbitration award and confirming the arbitration award in favor of appellee is affirmed. An arbitrator's award shall be vacated if the arbitrator exceeds authority or does not draw its essence from the agreement. Here, the arbitrator discussed the contract language and provided her basis for the award, which meant that the arbitrator's award drew its essence from the parties' agreement. The award did not conflict with the express terms of the agreement and was rationally derived from the terms of the agreement.

110591 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
CONTEMPT OF: J.A.P.

Reversed and remanded.

Kathleen Ann Keough, J., Frank D. Celebrezze, Jr., P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Contempt; anticipated breach; shared parenting agreement; violation.*

Juvenile court abused its discretion in finding Mother in contempt when the motion to show cause was premised on an anticipated breach of the shared parenting agreement. Although Mother scheduled a vacation in contravention of the agreement, the action did not interfere with Father's parenting because the vacation did not happen. There was no violation of the agreement.

110596 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v GARY TAYLOR

Affirmed.

Kathleen Ann Keough, J., Sean C. Gallagher, A.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Inferences; stacking; other acts evidence; Evid.R. 404(B); motion to suppress; custody; Miranda; circumstantial evidence; sufficiency and manifest weight of the evidence.*

The jury did not impermissibly stack inferences in concluding that the defendant had disposed of bloody boots where the inference was based on factual evidence that the defendant was wearing boots ten days prior to the victim's murder and the boots were not recovered by the police; the trial court did not admit other acts evidence for a purpose not permitted by Evid.R. 404(B); trial court did not err in denying the defendant's motion to suppress

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inculpatory statements he made to the police prior to the victim's murder because the defendant was not in custody at time and he volunteered the statements and, therefore, no Miranda warning was required; defendant's conviction for aggravated murder, although based on circumstantial evidence, was supported by sufficient evidence and not against the manifest weight of the evidence.

110629 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v JAMES DOWELL

Affirmed.

Mary J. Boyle, J., Mary Eileen Kilbane, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Crim.R. 25(B); subsequent judge presiding over postconviction proceedings; Crim.R. 33(B); motion for leave to file a motion for a new trial; newly discovered evidence; clear and convincing proof; res judicata.*

As duly-elected successor to the trial judge, the judge presiding over the appellant's motion for leave to file a motion for a new trial had authority under Crim.R. 25(B) to rule on the motion. The trial court did not abuse its discretion in denying the motion because, pursuant to Crim.R. 33(B), the appellant neither presented material evidence outside the record that was unavailable to him at the time of trial or direct appeal nor showed by clear and convincing proof that he was unavoidably prevented from discovering the evidence. The evidence is barred by res judicata because the appellant raised the same evidence in his motion for leave to file a motion for a new trial that he raised in prior petitions for postconviction relief.

110641 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
FRANKLIN DISSOLUTION L.P. v ATHENIAN FUND MANAGEMENT, INC.

Affirmed.

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

KEY WORDS: *Petition to compel arbitration; R.C. 2711.03(A) and (B); denial of discovery request; abuse of discretion.*

Successor to investor fund filed petition to compel arbitration to resolve fund manager's claim for fees. The trial court properly limited its inquiry to determining the validity of the arbitration agreement in granting the petition to compel arbitration and properly found that it was necessary to apply terms of the contract containing the arbitration provision to resolve the parties' dispute. The trial court did not abuse its discretion in denying fund manager further discovery where there was no showing discovery would

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assist in determining the validity of the arbitration agreement.

110647 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CORNELIUS L. PAMES

Affirmed.

Eileen A. Gallagher, P.J., Emanuella D. Groves, J., and Mary J. Boyle, J., concur.

KEY WORDS: *Presentence motion to withdraw guilty plea; abuse of discretion; coercion; family pressure.*

Trial court did not abuse its discretion in denying defendant's presentence motion to withdraw his guilty pleas because nothing in the record demonstrated that motion was based on anything more than a change of heart. Defendant's claims that, due to stress over his father's health, he "didn't hear" the trial court during the plea colloquy and did not understand the offenses to which he was pleading guilty were not credible and were contradicted by the record. The record contained nothing to support defendant's assertion that defense counsel coerced him to accept the state's plea offer. Familial pressure to "take the plea" was not sufficient evidence of coercion to warrant withdrawal of defendant's guilty pleas.

110781 PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: THE GUARDIANSHIP OF TERRI M. WILLIAMS

Affirmed.

Frank D. Celebrezze, Jr., P.J., Mary Eileen Kilbane, J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Guardianship; appointment of guardian; best interest; abuse of discretion; App.R. 12; App.R. 16.*

The trial court did not abuse its discretion in granting appellee's guardianship application and denying appellant's guardianship application.

110888 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v TYSEAN FULLER

110889 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v TYSEAN FULLER

Dismissed.

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

KEY WORDS: Petition for postconviction relief; final order.

The trial court's journal entry denying appellant's "Motion to Grant Defendant/Petitioner's Verified Petition for Post-Conviction Relief" is not a final order conferring jurisdiction upon this court pursuant to R.C. 2505.02.

Accordingly, we dismiss appellant's appeal.