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Court of Appeals, Eighth Appellate District

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November 23, 2022

111208 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RICARDO JONES

Reversed and remanded.

Anita Laster Mays, P.J., Kathleen Ann Keough, J., and Mary J. Boyle, J., concur.

KEY WORDS: *R.C. 2929.14(C)(4); R.C. 2929.41; consecutive sentences; R.C. 2152.16(A)(1)(b); juvenile commitment; R.C. 2953.08(G)(2)(b); sentence contrary to law.*

The imposition of consecutive sentences in this case is contrary to law under R.C. 2953.08(G)(2)(b). Appellant was serving a juvenile commitment at the Ohio Department of Youth Services (“ODYS”) until the age of 21. Appellant was directly indicted by the Cuyahoga County Court of Common Pleas and pleaded guilty to a felony assault that occurred at ODYS two months after appellant’s eighteenth birthday. The trial court invoked R.C. 2929.14(C)(4) to impose a two-year sentence to be served consecutive to the completion of appellant’s juvenile commitment. A juvenile adjudication is civil and rehabilitative while a criminal sentence is criminal and punitive. State v. Hand, 149 Ohio St.3d 94, 2016-Ohio-5504, 73 N.E.3d 448. A court may only impose sentences provided by statute. State v. Williams, 148 Ohio St.3d 403, 2016-Ohio-7658, 71 N.E.3d 234. There is no statutory basis under the record before this court to impose an adult criminal sentence to be served consecutive to the completion of a civil juvenile commitment term.

111347 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v BENNIE THORNTON, JR.

Affirmed.

Mary Eileen Kilbane, J., Sean C. Gallagher, A.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Reagan Tokes Law; right to trial by jury; separation-of-powers doctrine, due process rights.*

Appellant’s indefinite sentence imposed pursuant to the Reagan Tokes Law does not violate his constitutional rights.

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111359 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MARTEZ SHARP

111360 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MARTEZ SHARP

Reversed and remanded.

Kathleen Ann Keough, J., Frank Daniel Celebrezze, III, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

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

Trial court erred in failing to sentence the defendant to an indefinite sentence because the defendant pleaded guilty to qualifying felonies under the Reagan Tokes Law. The Reagan Tokes Law does not violate a defendant's right to due process or to a jury trial afforded under the Sixth Amendment and does not violate the doctrine of separation of powers.

111377 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DARNELL WHITFIELD

Affirmed.

Cornelius J. O'Sullivan, Jr., J., Frank Daniel Celebrezze, III, P.J., and Kathleen Ann Keough, concur.

KEY WORDS: *R.C. 2907.02(A)(2); rape; sufficiency of the evidence; manifest weight of the evidence.*

Appellant's rape conviction under R.C. 2907.02(A)(2) is supported by sufficient evidence where the victim testified that appellant forced her onto his lap, tried to kiss her while she resisted, laid her down on the floor, pulled her pants down, and raped her while she verbally and physically resisted.

Appellant's rape conviction is not against the manifest weight of the evidence. Although the victim could not remember some of the details regarding her prior interactions with appellant, which, at the time of trial, were five years prior, she was detailed about the rape.

111385 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v WILLIAM HANLAN, JR.

Affirmed.

Mary J. Boyle, J., Anita Laster Mays, P.J., and Michelle J. Sheehan, J., concur.

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KEY WORDS: *R.C. 2967.191(A); jail-time credit; pretrial bond condition; GPS monitoring; house arrest; home detention.*

Judgment affirmed. Appellant filed a motion requesting jail-time credit for days he was placed on pretrial house arrest as a condition of his bond. The trial court properly denied the motion because pretrial house arrest as a condition of bond does not constitute confinement or detention for purposes of awarding jail-time credit under R.C. 2967.191(A).

111400 CLEVELAND MUNI. G Civil Muni. & City
CITY OF CLEVELAND v TERRELL J. COLBY, ET AL.

Affirmed.

Kathleen Ann Keough, J., Frank Daniel Celebrezze, III, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Motion for summary judgment; nuisance; notice of violation; demolition costs; procedural due process; R.C. 715.261(B); C.C.O. 3103.09; jointly and severally responsible.*

Trial court did not err in granting summary judgment to the city for collection of its costs incurred in demolishing nuisance property once owned by appellant where the notice of violation complied with the procedural due process requirements of R.C. 715.261(B) and C.C.O. 3103.09 and appellant failed to produce any evidence demonstrating a genuine issue of material fact for trial regarding the adequacy of the notice or its liability; trial court properly awarded judgment against appellant for 100 percent of the city's demolition costs even though appellant owned the nuisance property only 20 percent of the time from condemnation to demolition because under C.C.O. 3103.09(k)(2), the city may recover all of its costs related to demolition from any owner in the chain of title.

111401 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CHARLES TROWBRIDGE

Affirmed.

Cornelius J. O'Sullivan, Jr., J., Frank Daniel Celebrezze, III, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Resentencing; Crim.R. 11; motion to withdraw guilty plea; res judicata.*

Appellant was resentenced after the state successfully appealed the consecutive nature of his sentence. Appellant only raises

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claims related to his original plea hearing. Appellant's claims are barred by res judicata.

111455 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CE'MATIZEA ANDREWS

Affirmed.

Cornelius J. O'Sullivan, Jr., J., Frank Daniel Celebrezze, III, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: Motion for resentencing; petition for postconviction relief; direct appeal; untimely; res judicata.

The trial court properly treated appellant's motion for resentencing as a petition for postconviction relief because it (1) was filed after he had already filed a direct appeal, (2) claimed a denial of his constitutional right to effective assistance of counsel, (3) sought to render the trial court's judgment voidable, and (4) asked for the court to vacate his conviction and sentence.

The trial court properly denied appellant's petition for postconviction relief because it was untimely filed and not subject to the exception set forth under R.C. 2953.23(A)(1). Further, the petition was barred under the doctrine of res judicata, as appellant's claims should have been raised in his direct appeal.

111524 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CAROL BUONOPANE v THE M. COMPANY, LTD.

Affirmed.

Cornelius J. O'Sullivan, Jr., J., Frank Daniel Celebrezze, III, P.J., and Eileen A. Gallagher, concur.

KEY WORDS: Civ. R 56; summary judgment; open and obvious; attendant circumstances.

The trial court correctly granted summary judgment to a restaurant when appellant fell on the sidewalk in front of the restaurant entrance. The appellant admitted she was not looking where she was walking because she was looking at the signs on the restaurant door, but if she had looked down, she would have seen the expansion joint in the sidewalk. The small expansion joint between the two sections of the sidewalk was an open and obvious hazard, and the COVID-19 signs posted on the restaurant doors were not attendant circumstances that created an issue of fact.

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111652 CLEVELAND MUNI. G Civil Muni. & City
CLEVELAND MUNI CT-CRIMINAL DIV. v RASHEEDA PROPERTIES LLC

111653 CLEVELAND MUNI. G Civil Muni. & City
CLEVELAND MUNI CT-CRIMINAL DIV. v RASHEEDA PROPERTIES LLC

Affirmed.

Michelle J. Sheehan, P.J., Eileen T. Gallagher, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Civ.R. 60(B); abuse of discretion.*

The decision to deny a motion for relief from judgment without hearing is within the discretion of the trial court. Where a motion for relief from judgment does not present a meritorious claim if relief from judgment is granted, the trial court cannot be said to have abused its discretion.

Appellant filed motions for relief from judgment in two collection cases for fines and costs entered in separate, ongoing cases. Appellant argued that it presented a meritorious claim where it asserted error of service in the separate cases. Appellant did not present evidence of service in the separate cases and only argued that one method of service was not made. As such, appellant did not present a record that appellant had a meritorious claim if relief from judgment was granted. Further, the trial court did not err in denying the motions for relief from judgment by noting that the cases from which the judgments arose were ongoing.

111657 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
SHAWN WEILER v C.L.

Affirmed.

Eileen T. Gallagher, J., Michelle J. Sheehan, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Malicious civil prosecution; malicious criminal prosecution; constructive fraud; motion to dismiss; Civ.R. 12(B)(6).*

Trial court properly dismissed complaint for failure to state a claim for malicious civil or criminal prosecution where the complaint alleged that prior proceedings did not end in the plaintiff's favor.

Trial court properly dismissed constructive fraud claim where complaint contained no allegations of a special or fiduciary relationship between the plaintiff and defendant.

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111669 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: J.H., ET AL.

Affirmed.

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

KEY WORDS: *Termination of parental rights; permanent custody; continuance; manifest weight of the evidence; sufficiency of the evidence; clear and convincing evidence; R.C. 2151.414; R.C. 2151.413; R.C. 2151.353.*

The juvenile court's judgment granting permanent custody of two siblings to the agency was not against the manifest weight of the evidence or based on insufficient evidence. The juvenile court did not err in refusing to grant Mother's continuance on the same day of the permanent custody hearing. Evidence presented at the permanent custody hearing supports the trial court's order granting permanent custody to the agency.

111749 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: J.T., ET AL.

Affirmed.

Mary Eileen Kilbane, P.J., Emanuella D. Groves, J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Permanent custody; standing; motion to continue.*

Mother lacked standing to challenge the trial court's denial of Father's motion to continue without a showing that such denial prejudiced Mother.

111828 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE E.J.W.

Reversed and remanded.

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

KEY WORDS: *R.C. 2151.23(l); R.C. 2152.02(C)(5); jurisdiction; juvenile court; transfer; 21 years old.*

Juvenile court erred in dismissing case for lack of jurisdiction on the basis that appellee could not statutorily be considered a child after his felony convictions because although appellee pleaded guilty to felonies in two cases in the general division of the

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common pleas court, the cases were not transferred from juvenile court to the general division as required by R.C. 2152.02(C)(5) to preclude juvenile court jurisdiction; juvenile court erred in finding that R.C. 2151.23(I) precluded jurisdiction because appellee was 17 when the offenses were committed, 19 when the juvenile complaint was filed, and had not reached the age of 21, as required by the statute.