

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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October 20, 2022

111138 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JONATHAN REDMOND

Affirmed.

Mary J. Boyle, J., Sean C. Gallagher, A.J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: Rape; R.C. 2907.02(A)(2); kidnapping; R.C. 2905.01(A)(4); Crim.R. 29; sufficiency of the evidence; manifest weight of the evidence; ineffective assistance of counsel; jury waiver; R.C. 2945.05.

Appellant's rape and kidnapping convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. Counsel was not ineffective for attacking the victim's credibility, and appellant's claim of ineffective assistance of counsel cannot be based on evidence that is outside the record. The trial court reviewed appellant's right to a jury at two separate jury-waiver hearings, appellant executed written jury waivers in the presence of counsel, and both waivers were filed as part of the record. Appellant's jury waiver was therefore voluntary, knowing, and intelligent.

111172 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
LINNIE EDWARDS v CHRISTOPHER KELLEY

Affirmed.

Cornelius J. O'Sullivan, Jr., J.; Sean C. Gallagher, A.J., concurs (with separate attached opinion); Emanuella D. Groves, J., concurs in judgment only.

KEY WORDS: Legal malpractice; former R.C. 2929.15(B)(1); Civ.R. 56; motion for summary judgment; community-control sanctions; technical violation; nontechnical violation; Civ.R. 56(F); motion for discovery.

The trial court did not err in granting summary judgment in a legal malpractice action in favor of the appellee-attorney when there is no genuine issue of material fact that had the attorney objected at appellant's sentencing hearing that her sentence would have been different. The trial court did not err in finding that appellant committed nontechnical violations of her community-control sanctions.

The trial court did not abuse its discretion when it denied appellant's motion for discovery pending summary judgment because appellant's motion was procedurally deficient. Appellant failed to support her motion with an affidavit.

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111203 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v WYNZO BROWN

Reversed and remanded.

Emanuella D. Groves, J., Frank Daniel Celebrezze, III, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Sentencing; attempt; R.C. 2923.02; driver's license suspension; contrary to law.*

Trial court erred in imposing driver's license suspension to conviction under attempt statute R.C. 2923.02. Attempt is its own offense. R.C. 2921.331(E) sentencing requirements do not apply.

111220 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TYREE ALLEN

Affirmed in part, vacated in part, and remanded.

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

KEY WORDS: *Crim.R. 11 guilty plea; felony sentencing; R.C. 2929.14(A)(2).*

The trial court complied with Crim.R. 11(C)(2) when accepting the defendant's guilty plea. The trial court imposed ten-year prison sentences for second-degree felonies. Pursuant to R.C. 2929.14(A)(2), the maximum prison sentence for a second-degree felony is eight years in prison. Therefore, the sentence is contrary to law. Convictions are affirmed. The sentence is vacated in part, and the case is remanded for the limited purpose of resentencing.

111261 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CONTINUUM TRANSPORTATION SERVICES, LTD. v
ELITE INTERNATIONAL CORP. L.L.C., ET AL.

Affirmed.

Michelle J. Sheehan, J., and Eileen A. Gallagher, P.J., concur; Lisa B. Forbes, J., concurs in judgment only.

KEY WORDS: *Quantum meruit; unjust enrichment; promissory estoppel; damages; bills of lading; interstate commerce act; summary judgment; abuse of discretion.*

A manufacturer, as consignee, used a shipping agent to facilitate

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the transport of goods from Illinois to its various locations in several states. The shipping agent hired carrier to transport the goods and paid for a portion of the transport fees. The shipping agent did not pay the carrier. Carrier sought equitable relief from consignee of the goods based upon theories of quantum meruit, unjust enrichment, and promissory estoppel. The carrier did not attach bills of lading or make claims against consignee in contract law. The trial court granted summary judgment to carrier on claims of quantum meruit and unjust enrichment and denied summary judgment on the claim of promissory estoppel. Having granted summary judgment, the trial court determined consignee was liable to carrier for only that amount it had not already paid the shipping agent. Although carrier sought to have consignee pay in full, carrier did not raise contractual claims against it. The trial court did not abuse its discretion in determining damages in equity.

111286 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v LEONARD HOWARD

Affirmed.

Sean C. Gallagher, A.J., Emanuella D. Groves, J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Postconviction relief; R.C. 2953.21; successive petition; R.C. 2953.23; Brady violation.*

Trial court correctly determined that it lacked jurisdiction to consider petitioner's successive petition for postconviction relief under R.C. 2953.23(A)(1), and that decision was consistent with the Ohio Supreme Court's analysis in State v. Bethel, 167 Ohio St.3d 362, 2022-Ohio-783, 192 N.E.3d 470.

111293 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DEVAL H. HARRELL, SR.

Affirmed.

Cornelius J. O'Sullivan, Jr., J.; Sean C. Gallagher, A.J., concurs with separate concurring opinion; Emanuella D. Groves, J., concurs with the majority and concurs with the separate concurring opinion.

KEY WORDS: *Felonious assault; kidnapping; motor vehicle; failure to comply; sufficiency of evidence; prior convictions; old presentence-investigation reports.*

The evidence was sufficient to demonstrate that appellant used his vehicle as a deadly weapon. The evidence was also sufficient to demonstrate that appellant caused or attempted to cause physical injury to one of the law enforcement officials on the scene. The evidence therefore was sufficient to support the felonious assault

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conviction.

The evidence was sufficient to demonstrate that appellant used force, i.e., his vehicle, to remove the victim from the place where she was found; that she voluntarily got into his vehicle was not determinative. The evidence was sufficient to demonstrate that the victim was under appellant's power and beyond immediate help; she was compelled to stay in the vehicle. The evidence therefore was sufficient to support the kidnapping conviction.

The trial court properly allowed questioning as to prior incidents appellant had with law enforcement involving his truthfulness and compliance with orders as he opened the door to the line of questioning.

The trial court did not abuse its discretion by denying appellant's request for a new presentence-investigation report. The court did not impose community-control sanctions; therefore, it was not required to order a presentence investigation. Further, the trial court had appellant's prior background information and his counsel informed the court of appellant's recent information since his last presentence-investigation report six years prior.

111307 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v T. D.

Affirmed.

Eileen T. Gallagher, J., and Eileen A. Gallagher, P.J., concur; Mary J. Boyle, J., concurs in judgment only (with separate attached opinion).

KEY WORDS: Expungement; eligible offender; evidentiary hearing; issue of law.

Trial court properly denied applicant's motion to seal criminal convictions without a hearing where documentary evidence showed the applicant was not an eligible offender.

111337 GARFIELD HTS. MUNI. C Criminal Muni. & City
CITY OF INDEPENDENCE v THERESA A. ISMAIL

Vacated and remanded.

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

KEY WORDS: R.C. 2901.02; criminal jurisdiction of the municipal court; criminal complaint; R.C. 2923.02; R.C. 2911.13; attempt; passing bad checks.

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(Case 111337 continued)

Appellant was convicted after trial on a complaint filed in municipal court that alleged appellant attempted to pass a bad check of \$7,500 in violation of R.C. 2923.02 and 2913.11. The complaint charged a felony offense. Pursuant to R.C. 2901.02, the municipal court did not have jurisdiction to try a complaint alleging a felony offense. Conviction vacated, and case remanded to the trial court for further proceedings.

111427	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v BRUNO J. VERBANAC			

Vacated and remanded.

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

KEY WORDS: Final, appealable order; R.C. 2505.02(B)(4); attorney-client privilege; R.C. 2317.02(A)(1); attorney testimony; court order; Prof.Cond.R. 1.6.

The trial court's order compelling appellant's former attorney to testify was error because the order did not sufficiently limit the compelled testimony to a conversation where the trial court previously ruled that the attorney-client privilege was waived by the client.

111444	JUVENILE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
IN RE: L.R.-R., ET AL.			

Affirmed.

Lisa B. Forbes, J., and Anita Laster Mays, P.J., concur; Cornelius J. O'Sullivan, Jr., J., concurs (with separate concurring opinion attached).

KEY WORDS: Termination of parental rights; permanent custody; R.C. 2151.414; best interest of the child; clear and convincing evidence.

The court's termination of Mother's parental rights and award of permanent custody to the agency was supported by clear and convincing evidence in the record. Evidence presented at the hearing supported the court's findings that the children had been in agency custody for 12 or more months of a consecutive 22-month period, that the children cannot or should not be placed with either parent within a reasonable time, and that the award of permanent custody to the agency was in the children's best interest.

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111505 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE R.H.

Affirmed.

Cornelius J. O'Sullivan, Jr., J., Kathleen Ann Keough, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Permanent custody; child not abandoned or orphaned but cannot be placed with either parent within a reasonable time period or should not be placed with the parents; best interest of child; no motion for legal custody to relative filed.

Clear and convincing evidence supports the trial court's judgment granting permanent custody of the child to the agency.

It is mandatory that in order for a trial court to grant legal custody to a relative or interested party, a motion for legal custody must be filed. No motion for legal custody was filed. Further, the record demonstrates that legal custody to the paternal aunt was not in the child's best interest.