

April 13, 2023

109678 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DAVID WAGNER

Affirmed.

Emanuella D. Groves, J., Kathleen Ann Keough, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Consecutive sentences, R.C. 2929.14(C)(4); R.C. 2953.08(G)(2).*

Trial court properly imposed consecutive sentences after thorough review of case under applicable statutes. Trial court is not required to quote verbatim from the statute. Sentence will be upheld if reviewing court can discern that trial court applied appropriate standard and if facts in the record support the trial court's ruling.

Plain error; ineffective assistance of counsel; comparable sentencing; cumulative error; abuse of discretion.

Trial court did not commit plain error at sentencing where the record reflects that it reviewed all sentencing factors appropriately and made a record where required pursuant to R.C. 2953.08(G)(2).

Further, appellant failed to establish he was prejudiced when the trial court considered a videotape of the crime and testimony of the victim at a codefendant's trial where the record established that there was independent evidence presented supporting the trial court's ultimate findings.

Trial counsel did not provide ineffective assistance of counsel. Although the competency evaluation was not a part of the appellate record during appellant's first appeal, it was in the record before the trial court. Further, the parties stipulated to its contents. Counsel's decision to summarize the evaluation rather than submit it into the record was strategic, because the contents contained multiple factors unfavorable to appellant.

Trial counsel was not ineffective for failing to object to or request a continuance of the sentencing hearing. There was adequate support for the trial court's decision in the record; accordingly counsel was able to discuss the change with appellant and the likely effects. Although appellant alleges there was a witness that was unavailable at the hearing, appellant failed to raise that issue before the trial court and both appellant and trial counsel agreed on the record to proceed with the advanced date.

Trial counsel was not ineffective for failing to object to the trial court's reliance on evidence outside the record. Prosecutor summarized criminal conduct and content of video. Appellant was not prejudiced by the trial court's consideration of the victim's testimony.

Trial court did not err in sentencing appellant more harshly than a

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codefendant. Codefendant pleaded guilty to less serious charges and appellant was identified as the primary aggressor. Although engaged in the same incident, appellant and his codefendant were not similarly situated.

Finally, appellant failed to establish that there were multiple cumulative errors that deprived him of a fair sentence.

111613 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KYLE KRILL

Affirmed.

Anita Laster Mays, A.J., Frank Daniel Celebrezze, III, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Waiver of jury trial; firearm specifications; ineffective assistance of counsel.*

The trial court did not err when it accepted the appellant's jury trial waiver because the waiver was executed in open court, signed, and the appellant was represented by counsel. The trial court did not err when it sentenced the appellant on firearm specifications because the trial court has the authority to sentence and made the necessary findings. The appellant was not rendered ineffective assistance of counsel for counsel's failure to object to the trial court's imposition of a prison sentence on the firearm specifications, because the trial court has the authority to sentence the appellant on firearm specifications.

111647 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CHRISTOPHER HUGHKEITH, JR.

Affirmed.

Eileen T. Gallagher, J., Lisa B. Forbes, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Self-defense; jury view; abuse of discretion; plain error; duty to retreat; instruction; prosecutorial misconduct; judicial bias; prejudice; right to remain silent; gatekeeper; sufficient; manifest weight; persuasion.*

The trial court did not abuse its discretion by denying the defendant's request for a jury view. The defendant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence. Appellant was not denied the effective assistance of counsel. The trial court's jury instruction on the affirmative defense of self-defense was not inaccurate or otherwise misleading. The trial court did not display bias by instructing the defendant to refrain from testifying in the narrative

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on cross-examination. The state did not commit prosecutorial misconduct during its cross-examination of the defendant or during its closing remarks. The defendant waived his right to remain silent by knowingly and intelligently exercising his right to testify on his own behalf.

111717 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAMES CORCORAN

Affirmed.

Emanuella D. Groves, J., Frank Daniel Celebrezze, III, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: Crim.R. 29; sufficiency of the evidence; weight of the evidence; ineffective assistance of counsel; outrageous government conduct.

Appellant's convictions for attempted unlawful sexual conduct with a minor and importuning were supported by sufficient evidence. Although there was insufficient evidence to establish that appellant knew or believed that the alleged victim, an undercover police officer, was over the age of thirteen but under the age of sixteen, sufficient evidence was presented to establish that he was reckless with respect to the alleged victim's age.

Further, there was sufficient evidence to establish that the appellant committed the crime of possession of criminal tools when he was arrested after driving to a predetermined location to meet with an undercover officer with tools to assist in the crime on his person.

Appellant's convictions were supported by the greater weight of the evidence, where, although the evidence did not establish knowledge or belief as to the age of the alleged victim, the evidence established that appellant was reckless with regard to age when the alleged victim told appellant that he was doing homework, lived with his mother, was sexually inexperienced, and responded "that 15 yo lyfe" during his chat with appellant. Further, the possession of criminal tools conviction was supported by the greater weight of the evidence.

Finally, appellant did not receive ineffective assistance of counsel, where trial counsel did not raise the outrageous government conduct defense. The record failed to establish that appellant would have prevailed had the motion been filed. Accordingly, he could not establish that counsel was ineffective for choosing not to raise the issue.

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111795 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANTHONY GARCIA

Reversed and remanded.

Lisa B. Forbes, P.J., Eileen T. Gallagher, J., and Mary J. Boyle, J., concur.

KEY WORDS: *Reagan Tokes Law.*

Defendant's challenges to the constitutionality of the Reagan Tokes Law were overruled in this court's en banc decision in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.). The state of Ohio's assignment of error is sustained. Reversed and remanded.

111889 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KENDLE CONNER

Affirmed.

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

KEY WORDS: *Crim.R. 11(C)(2); knowing, intelligent and voluntary guilty pleas; merger of allied offenses; 2953.08(D)(1); agreed sentencing range; authorized by law; R.C. 2941.25(A); waiver.*

Trial court did not err in accepting defendant's guilty pleas. Record reflected that trial court complied with Crim.R. 11(C)(2) and that guilty pleas were entered knowingly, intelligently and voluntarily. There is no requirement that a trial court advise a defendant regarding the possible merger of offenses for sentencing or ensure that a defendant understands the merger of offenses before accepting the defendant's guilty pleas. Pursuant to R.C. 2953.08(D)(1), sentences were not subject to appellate review where trial court imposed sentences in accordance with the parties' agreed aggregate sentencing range. Defendant waived allied offenses issue where transcript demonstrated that the state and defense counsel agreed, as part of the plea agreement, that offenses did not merge for sentencing.

112091 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
SHAWN WEILER v DLR GROUP, INC., A NEBRASKA CORP., ET AL.

Affirmed.

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

KEY WORDS: *Motion to dismiss; Civ.R. 12(B)(6); tortious*

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interference with a business relationship.

Affirmed. The amended complaint lacks allegations of fact supporting each element of a tortious interference claim, and as a result, those allegations are not sufficient to survive a motion to dismiss for failure to state a claim under Civ.R. 12(B)(6).