

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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August 3, 2023

111960 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOHN B. COPLEY

Affirmed.

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

KEY WORDS: *Reagan Tokes, constitutionality, indefinite sentence, ineffective assistance of counsel, maximum sentence, R.C. 2929.11, 2929.12.*

Trial court did not err when it issued an indefinite sentence under S.B. 201, the Reagan Tokes Law. Furthermore, appellant cannot establish he received ineffective counsel for his counsel failing to fully preserve an objection to his sentence. The Supreme Court has recently determined that Copley's constitutional arguments fail. State v. Hacker, Slip Opinion No. 2023-Ohio-2535.

An appeals court reviews a sentence solely to determine whether the sentence is clearly and convincingly not supported by the record or contrary to law. Appellant failed to establish that the sentence was contrary to law where the court's finding that appellant did not show "much" remorse was within its discretion under R.C. 2929.12(D)(5).

111964 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TIMOTHY EVANS

Affirmed in part; vacated in part; and remanded.

Lisa B. Forbes, J., and Emanuella D. Groves, J., concur; Mary Eileen Kilbane, P.J. dissents (with separate opinion).

KEY WORDS: *Involuntary manslaughter; discharge of firearm on or near prohibited premises; having weapons while under disability; sufficiency of the evidence; proximate cause element of involuntary manslaughter; complicity.*

Defendant's conviction for involuntary manslaughter is reversed because it is not supported by sufficient evidence in the record. The defendant shot his gun into the hood of a woman's car at a crowded vigil. Other people then shot their guns into this woman's car, killing her fetus. No evidence was presented at trial that the defendant's shooting his gun was the cause of the fetus's death. Furthermore, no evidence was presented at trial that the defendant was complicit with the person who fired the fatal shot. Defendant's conviction for discharge of a firearm on or near prohibited premises is amended from a first-degree felony to a first-degree misdemeanor because there was no evidence that the defendant

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(Case 111964 continued)

caused physical harm to another person by shooting his gun into the hood of a car.

112142 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOHNNY WALKER

Reversed and remanded.

Mary J. Boyle, J., Eileen T. Gallagher, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Motion for leave; motion for new trial; Crim.R. 33; clear and convincing proof; unavoidably discovered; abuse of discretion; State v. Bethel, 167 Ohio St.3d 362, 2022-Ohio-783, 192 N.E.3d 470.*

Judgment reversed and remanded. Defendant is entitled to a hearing on his motion for leave to file a motion for a new trial because the affidavit he submitted, on its face, supports his claim that he was unavoidably prevented from discovering the evidence at issue.

112174 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v HERMAN T. AUSTIN

Affirmed.

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

KEY WORDS: *Reagan Tokes Law; indefinite sentence; constitutional challenges; due process; separation of powers; right to jury trial.*

Pursuant to the en banc decision in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.), appellant's constitutional challenges to the Reagan Tokes Law are overruled.

Reagan Tokes Law; indefinite sentence; constitutional challenges; due process; separation of powers; right to jury trial.

Pursuant to State v. Hacker, Slip Opinion No. 2023-Ohio-2535, appellant's constitutional challenges to the Reagan Tokes Law are overruled.

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112202 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ALONZO KYLES

Reversed and vacated.

Emanuella D. Groves, J.; Frank Daniel Celebrezze, III, P.J., concurs with majority opinion and separate concurring opinion; Sean C. Gallagher, J., concurs (with separate concurring opinion).

KEY WORDS: *Cruelty to animals, companion animal; domestic animals, feral, R.C. 959.131; plain meaning; kept; evidence; R.C. 956.01; R.C. 959.131(A); residential dwelling; legislative intent; H.B. 108; sufficient evidence; misdemeanor; enhanced penalty.*

Judgment reversed and vacated. R.C. 959.13 prohibits cruelty to animals. A conviction for animal cruelty is generally a misdemeanor offense; however, abuse of a companion animal may be a felony. In order to establish that an animal is a companion animal, there must be sufficient evidence that the animal is kept in a residence. In the case of dogs or cats, there must be sufficient evidence that the animal is kept in order to sustain a felony conviction pursuant to R.C. 959.131.

112371 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
WILLIE S. SMITH v JUDGE STEVEN E. GALL, ET AL.

Affirmed.

Eileen T. Gallagher, P.J., Mary J. Boyle, J., and Michael John Ryan, J., concur.

KEY WORDS: *Dismiss; declaratory judgment; postconviction; immunity; de novo; justiciable controversy; real controversy; trial judge; jurisdiction; judicial notice.*

The trial court did not err in granting the defendants' Civ.R. 12(B)(6) motion to dismiss. Declaratory relief does not provide a means whereby previous judgments by state or federal courts may be reexamined, nor is it a substitute for appeal or postconviction remedies. Where judges possess jurisdiction over a controversy, they are not civilly liable for actions taken in their judicial capacity because they have absolute immunity.