

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 3

August 17, 2023

111808 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TAVONTE TURNER

Reversed in part, vacated in part, and remanded.

Anita Laster Mays, A.J., and Emanuella D. Groves, J., concur; Kathleen Ann Keough, J., concurs (with separate opinion).

KEY WORDS: *Juvenile consecutive sentences; subject-matter jurisdiction.*

The state concedes that the trial court erred in sentencing the appellant to consecutive sentences that exceeded the statutory limit. The trial court lacked subject-matter jurisdiction over the appellant as to the charges of attempted murder and having weapons while under a disability.

111957 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CHRISTINE ZELE v THE OHIO BELL TELEPHONE COMPANY

Reversed and remanded.

Eileen A. Gallagher, J., Kathleen Ann Keough, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Motion to enforce settlement agreement; evidentiary hearing.*

Where factual disputes existed as to what, if anything, appellant agreed to with respect to settlement and what, if any, authority appellant's counsel had to negotiate and/or agree to a settlement on her behalf, trial court erred in granting appellee's motion to enforce settlement agreement without conducting an evidentiary hearing.

112133 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STARLION ELECTRONICS DISTRIBUTION, LLC v ZORAN MEDICAL, LLC, ET AL.

Affirmed.

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

KEY WORDS: *Contract; personal guaranty; consideration; unconscionability; substantive unconscionability; procedural unconscionability; doctrine of impossibility.*

CASE DECISION LIST

(Case 112133 continued)

Personal guarantor held individually liable for her company's contractual obligations where the agreement was supported by consideration, was not unconscionable, and was not barred by the doctrine of impossibility.

112154 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DANIELLE PASCALE

Affirmed.

Anita Laster Mays, A.J., Sean C. Gallagher, J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: Harmless error; R.C. 2929.19(A); consecutive sentences; Reagan Tokes Law; R.C. 2929.19(B)(2)(c).

The trial court committed harmless error when it sentenced the appellant to consecutive sentences for her misdemeanor conviction and felony convictions. The appellant did not demonstrate that the error affected the outcome of proceedings or sentence. The trial court did not err when it permitted the social worker to make statements at the sentencing hearing because it had broad discretion under R.C. 2929.19(A) to consider any information relevant to the imposition of a sentence. The record fully supports the imposition of consecutive sentences. The appellant's sentence in according to the Reagan Tokes Law has been ruled constitutional. The trial court did not fail to comply with R.C. 2929.19(B)(2)(c) because it stated all required notices to the appellant.

112175 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
WILMA WRIGHT, Executrix for the Estate of Larry T. Wright v
NORFOLK SOUTHERN RAILWAY COMPANY

Affirmed.

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

KEY WORDS: Summary judgment; FELA; pecuniary damages.

The trial court did not err in granting the appellee's motion for summary judgment because the appellant's FELA claim failed to set forth specific facts showing that there is a genuine issue for trial with regard to her pecuniary damages.

CASE DECISION LIST

112235 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KAREEM WALTON

Reversed and remanded.

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

KEY WORDS: *Reconsideration; Crim.R. 32.1 motion to withdraw guilty plea after conviction affirmed on direct appeal; jurisdiction.*

This court sua sponte reconsiders its decision in this case. After reconsideration, the opinion as announced by this court on July 6, 2023, State v. Walton, 8th Dist. Cuyahoga No. 112235, 2023-Ohio-2307, is hereby vacated and substituted with this opinion.

The holding in State ex rel. Special Prosecutors v. Judges, Court of Common Pleas, 55 Ohio St.2d 94, 378 N.E.2d 162 (1978), does not bar the trial court's jurisdiction over posttrial motions permitted by the Ohio Rules of Criminal Procedure after a defendant's appeal and an affirmance of the conviction. The holding in State ex rel. Davis v. Janas, 160 Ohio St.3d 187, 2020-Ohio-1462, 155 N.E.3d 822, makes clear that a defendant can seek relief from a final judgment via a Crim.R. 32.1 motion to withdraw guilty plea.

Thus, the trial court abused its discretion in determining that it lacked jurisdiction to consider appellant's Crim.R. 32.1 motion to withdraw his guilty plea; the trial court's judgment is therefore reversed, and the case is remanded.

112281 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
APPLE OHIO LLC v ROSE ITALIAN KITCHEN SOLON LLC, ET AL.

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: *Summary judgment; contract; sublease; guaranty; de novo; language; mitigate; duty to mitigate; lease; commercial; landlord; tenant; damages; relet; reasonable efforts; trier of fact.*

The trial court's decision to award summary judgment against the appellants was reversed in part, and the case was remanded because a genuine issue of material fact remained on the issue of whether a commercial landlord used reasonable efforts to mitigate its damages, which is a question for the trier of fact. Reasonably construed, the sublease provision incorporating the "applicable law" included the duty to mitigate and there was no contrary provision obviating that duty. Summary judgment on the claims was otherwise affirmed.