

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 5

August 31, 2023

112029 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAVIER RIVERA

Dismissed.

Anita Laster Mays, A.J.; Frank Daniel Celebrezze, III, J., concurs with majority opinion and separate concurring opinion; Sean C. Gallagher, J., concurs (with separate opinion).

KEY WORDS: *App.R. 4(A); App.R. 5(A); delayed appeal.*

Because appellant failed to file a timely appeal under App.R. 4(A) and did not file a motion for delayed appeal under App.R. 5(A), we lack jurisdiction to consider this appeal and must dismiss it.

112084 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v VALEMAR BLADE

Affirmed.

Frank Daniel Celebrezze, III, P.J., Kathleen Ann Keough, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Joinder of trials; Crim.R. 13; Crim.R. 8(A); object; failure to renew objection at end of state's case; waiver; plain error; prejudice; hearsay; exception; Evid.R. 804(B)(6); forfeiture by wrongdoing; right of confrontation; Evid.R. 801; unavailability of witness due to wrongdoing of party; admission of evidence; abuse of discretion; good faith effort to secure witness; subpoena; Evid.R. 804(B)(5); jailhouse calls; dissuade witness from testifying; actively engaging in wrongdoing; totality of the circumstances; no-contact order; preponderance of evidence; App.R. 16(A)(3); arguments not separately assigned as error.*

The trial court did not err in joining appellant's three cases for trial. The evidence in each of the three cases was simple and direct, and there is no indication in the record that the jury confused the evidence as to the different counts or that it was influenced by the cumulative effect of the joinder. In addition, appellant failed to demonstrate how he was prejudiced or that the outcome of the trial would have been different had the indictments not been joined.

The trial court properly admitted the victim's statements under the hearsay exception for forfeiture by wrongdoing. The state demonstrated by a preponderance of the evidence that appellant's conduct caused the victim to be unavailable and that his purpose in making so many calls to her was to cause her to be unavailable at trial.

CASE DECISION LIST

112102 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JUSTIN ABRAMS

Reversed and remanded.

Michelle J. Sheehan, P.J., Lisa B. Forbes, J., and Mary J. Boyle, J., concur.

KEY WORDS: *Sentence; constitutionality of Reagan Tokes Law.*

The trial court's judgment sentencing appellant to a definite sentence for his second-degree felony offense of felonious assaults is contrary to law pursuant to State v. Hacker, Slip Opinion No. 2023-Ohio-2535.

112122 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v AARON WILLIAMS

112123 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v AARON WILLIAMS

Reversed and remanded.

Lisa B. Forbes, J., Michelle J. Sheehan, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *The Reagan Tokes Law.*

Definite prison term reversed for failure to sentence under the Reagan Tokes Law.

112201 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JANIRY RIVERA

Affirmed.

Michelle J. Sheehan, P.J., Lisa B. Forbes, J., and Michael John Ryan, J., concur.

KEY WORDS: *Felony sentencing; standard of review; R.C. 2953.08(G)(2); R.C. 2929.11; R.C. 2929.12.*

Pursuant to R.C. 2953.08(G)(2), the appellate court may increase, reduce, or otherwise modify a sentence or vacate a sentence and remand for resentencing if it "clearly and convincingly" finds the record does not support the sentencing court's statutory findings under certain statutes that are not relevant in this appeal or that the sentence is "otherwise contrary to law." A sentence is contrary to law if (1) the sentence falls outside the statutory range for the particular degree of offense, or (2) the trial court fails to consider

CASE DECISION LIST

(Case 112201 continued)

the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the sentencing factors in R.C. 2929.12.

The four-year prison sentence imposed is not contrary to law because the trial court considered the purposes and principles of felony sentencing in R.C. 2929.11 and the sentencing factors in R.C. 2929.12 and the sentence falls within the statutory range for her offenses.

112248 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CHAMPLAIN ENTERPRISES LLC D.B.A. COMMUTAIR-UNITED EXPERIENCE v
JACOB DANIEL KUIPER

Reversed and remanded.

Lisa B. Forbes, J., Eileen A. Gallagher, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: Civ.R. 52 findings of fact and conclusions of law; breach of contract; Civ.R. 60(B) relief from judgment; abuse of discretion; meritorious defense; inexcusable neglect under Civ.R. 60(B)(5).

The trial court's denial of defendant's Civ.R. 60(B) motion for relief from judgment is reversed. Defendant's counsel's abandonment of the case amounted to inexcusable neglect under Civ.R. 60(B)(5) and is subject to relief from judgment.

112321 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
JOHN DIPRE v OHIO DEPARTMENT OF INSURANCE

Affirmed.

Mary Eileen Kilbane, J., Anita Laster Mays, A.J., and Emanuella D. Groves, J., concur.

KEY WORDS: Administrative appeal; Ohio Department of Insurance; notice of opportunity for hearing; order of revocation; R.C. 119.07; waiver; abuse of discretion; reliable, probative, and substantial evidence.

The trial court's order affirming the Ohio Department of Insurance's order of revocation of appellant's license was not an abuse of discretion where the order was supported by reliable, probative, and substantial evidence, where the appellant explicitly declined the opportunity for a hearing, and where the appellant provided a written admission to the allegations precipitating the revocation of his license. Appellant waived his right to challenge the constitutionality of R.C. 119.07 as applied to his case by not raising the issue before the administrative agency.

CASE DECISION LIST

112326 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v MAURICE JACKSON

Affirmed.

Anita Laster Mays, A.J., Mary Eileen Kilbane, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Res judicata.*

Appellant's assignments of error are barred by res judicata.

112328 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v LONTELL TURNER

Reversed and remanded.

Sean C. Gallagher, J., Lisa B. Forbes, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Sentencing; felonious assault; Reagan Tokes Law; S.B. 201; indefinite sentence; qualifying felony; second degree; R.C. 2929.14(A)(2)(a); R.C. 2929.144.*

Reversed the trial court's judgment that found the Reagan Tokes Law unconstitutional and imposed a definite sentence, instead of an indefinite sentence, for a qualifying second-degree felony offense. The case was remanded for resentencing on the felonious-assault offense in accordance with the Reagan Tokes Law.

112343 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
SIHAR T. RAZICK v ZIAD K. TAYEH

Reversed.

Mary Eileen Kilbane, J., Anita Laster Mays, A.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Final, appealable order; R.C. 2505.02; provisional remedy; ancillary proceeding; motion to quash; Civ.R. 45(C)(3)(d); undue burden; motion for protective order; Civ.R. 26(C); and balancing test.*

The trial court's order denying nonparty appellants' combined motion to quash subpoenas and motion for protective order constituted a final appealable order. The trial court abused its discretion when it denied appellants' motion for protective order where the record showed the harm that could result to the appellants from production of the documents outweighed the appellee's interests in receiving the subpoenaed documents.

CASE DECISION LIST

112581 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KIM DAVIS

Reversed and remanded.

Frank Daniel Celebrezze, III, P.J., Kathleen Ann Keough, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Restitution; disputed amount; failure to hold hearing; R.C. 2929.18(A)(1); conceded error; Loc.App.R. 16(B).*

The trial court erred by not holding a hearing on the issue of restitution when appellant disputed the amount requested by the state.

112621 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: I.Z.

Affirmed.

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

KEY WORDS: *R.C. 2151.414(B)(1)(d); permanent custody; best interest of the child R.C. 2151.414(D)(1).*

The trial court's decision to grant permanent custody to the agency was supported by competent and credible evidence when the child had been in agency custody for more than 12 out of 22 months and permanent custody was in the child's best interest. The mother was unable to establish sobriety, her whereabouts were unknown for most of the time the child was in agency custody and she did not visit with the child during that time, the caseworker was not able to visit mother's home to see if it was a safe and stable environment for the child to live in because mother would not give the agency her address, and the child's former legal custodian was no longer able to take care of him.