

February 9, 2023

110742 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KELLY JONES

Judgment affirmed in part; reversed in part; vacated in part; remanded.

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

KEY WORDS: *Confrontation Clause; non-testimonial statements; testimonial statements; objective witness test; primary purpose test; ongoing emergency; hearsay; excited utterance; Evid.R. 803(2); Crim.R. 29(A) motion for acquittal; sufficiency of the evidence; manifest weight of the evidence; allied offenses of similar import; R.C. 2941.25; imposition of consecutive sentences; indefinite sentence; Reagan Tokes Law; reopening case; App.R. 12(A)(2); App.R. 16(A)(7).*

Declarant's statements to neighbor, 911 operator, and EMS dispatcher were nontestimonial and admission of such statements did not violate the Confrontation Clause where declarant was in need of medical assistance and the primary purpose of statements was to obtain medical assistance. Declarant's statements to neighbor, 911 operator and EMS dispatcher were admissible as excited utterances under Evid.R. 803(2) where declarant personally observed a startling event, statements related to the startling event, and statements were made while declarant was still under the stress of excitement from the startling event.

Declarant's statements to police officers while in the custody of EMS personnel, receiving medical care in the back of an ambulance, at the hospital, and at a nursing facility were testimonial and admission of police officer testimony and body camera footage of such statements violated the Confrontation Clause where the primary purpose of the interrogation was to document past events for a later criminal investigation or prosecution. However, the erroneous admission of such evidence was harmless error where it was duplicative and cumulative of other, properly admitted evidence of declarant's statements to neighbor, 911 operator, and EMS dispatcher.

Defendant's convictions for aggravated arson, felonious assault, arson, and domestic violence were supported by sufficient evidence and were not against the manifest weight of the evidence.

Defendant cited no legal authority and made no argument in support of claim that trial court erred in allowing state to reopen its case to present additional evidence relating to repeat violent specifications after rendering its verdict on matters not tried to the jury.

Aggravated arson and felonious assault offenses of which defendant was convicted were allied offenses of similar import and trial court erred in failing to merge the offenses for sentencing; case remanded for a new sentencing hearing on those counts. Assignments of error challenging imposition of consecutive sentences and imposition of indefinite sentence under the Reagan Tokes Law were moot.

CASE DECISION LIST

111405 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
THE MENTER FAMILY REVOCABLE LIVING TRUST v RICHARD MENTER, ET AL.

Reversed and remanded.

Michael John Ryan, J., Michelle J. Sheehan, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Mandatory arbitration provision; motion to stay proceedings and compel arbitration; R.C. 2711.02; R.C. 2711.03; hearing.*

The trial court did not abuse its discretion by considering appellees' reply brief. The reply brief did not advance allegations; rather it rebutted appellant's opposing brief. Appellees did not move to strike the reply brief or seek leave to file a surreply brief.

Because appellant is challenging the execution of the arbitration provision itself and there is no evidence in the record that the trial court took this into consideration when granting appellees' motion to stay proceedings and compel arbitration, the case is remanded to the trial court for a hearing.

If, after the trial court conducts its hearing pursuant to our mandate herein and determines that the subject issues are arbitrable, because R.C. 2711.02 calls for a stay, not a dismissal, of an action referable to arbitration, the trial court should stay the case.

111406 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DEONTE MCCUTCHEN, SR.

Affirmed.

Anita Laster Mays, A.J., Eileen T. Gallagher, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *R.C. 2907.02(D); rape shield law; R.C. 2907.02(E); evidentiary hearing; Evid.R. 608; evidence of character and conduct; ineffective assistance of counsel; cumulative error.*

The trial court properly conducted an in camera proceeding to determine whether the victim's prior allegation of sexual activity involving another individual was prohibited by the rape shield law or was wholly unsubstantiated and admissible under Evid.R. 608. The defense bears the burden of demonstrating the accusations were totally false. Defense counsel's decision not to request a limiting instruction regarding appellant's prior conviction testimony was tactical and not in error where the trial court issued a general instruction on credibility. Appellant's argument that his constitutional rights were violated by the cumulative errors in this case fails where this court has found no errors were committed.

CASE DECISION LIST

111448 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RAESHAUN JOHNSON

Affirmed.

Michael John Ryan, J., Lisa B. Forbes, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Pro se litigant; guilty plea; presentence request to withdraw plea; abuse of discretion.*

The trial court admonished the defendant about proceeding pro se, but despite the admonishments, defendant opted to represent himself.

Although presentence motions to withdraw a guilty plea should be liberally granted, there is no absolute right to withdraw a guilty plea prior to sentencing. The trial court did not abuse its discretion in denying the defendant's presentence motion to withdraw his plea. The record demonstrates that the defendant had a full and fair Crim.R. 11 hearing at which he understood the nature of the charges and possible penalties. He was given an opportunity to state his ground for withdrawal of his plea, which demonstrated only that he had a change of heart.

111461 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOSEPH T. SCOTT

Reversed and vacated.

Anita Laster Mays, A.J., and Emanuella D. Groves, J., concur; Eileen T. Gallagher, J., dissents (with separate opinion).

KEY WORDS: *R.C. 2950.06(F); sex offender failure to verify address.*

Appellant's conviction for failure to verify address under R.C. 2950.06(F) was in error where appellant's Adam Walsh Act classification was unconstitutional and the Ohio Supreme Court had specifically mandated six years before appellant's conviction that appellant was to be properly classified under Megan's Law.

111481 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DANIEL ANGERS

Modified and remanded.

Michael John Ryan, J., Lisa B. Forbes, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Violation of community-control sanctions; driver's license suspension.*

Under R.C. 2929.15(B), when a defendant violates the conditions of his or her community control, a trial court has the option of imposing a longer period of community control, a more restrictive community-control sanction, or a prison term of any length within the range of that available for the original offense, up to the maximum that the trial court specified at the first sentencing hearing.

A driver's license suspension under R.C. 2925.22 is part of a defendant's prison sentence; it is not a community-control sanction. Thus, the suspension should have been imposed, if at all, at the original sentencing hearing. The trial court's imposition of a driver's license suspension for a violation of community-control sanctions is contrary to law.

111534 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DANIEL CARLSON

Affirmed.

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

KEY WORDS: *Sex offenses; S.B. 201; Reagan Tokes Law; constitutionality; ineffective assistance of counsel; sentence mitigation; trial strategy.*

Judgment affirmed. The trial court did not err in sentencing the defendant pursuant to S.B. 201, the Reagan Tokes Law because this court's en banc opinion in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.), held that the Reagan Tokes Law is constitutional. Defendant also did not receive ineffective assistance of counsel at the sentencing stage. Trial counsel's decisions concerning the presentation of mitigating evidence were matters of trial strategy and within the range of reasonable professional assistance.

111554 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DEVONTA HILL

Judgment affirmed.

Frank Daniel Celebrezze, III, P.J., and Eileen T. Gallagher, J., concur; Mary Eileen Kilbane, J., dissents with separate opinion.

KEY WORDS: *Motion to withdraw plea; Crim.R. 32.1; ineffective assistance of counsel; abuse of discretion; manifest injustice; trial*

CASE DECISION LIST

(Case 111554 continued)

court lacked jurisdiction following affirmance of conviction and sentence.

The trial court did not err in denying appellant's motion to withdraw plea because the trial court had no jurisdiction to consider appellant's motion after his conviction and sentence were affirmed on direct appeal.

111566 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
HATHAWAY BROWN SCHOOL v DESMOND CUMMINGS

Reversed and remanded.

Lisa B. Forbes, J., Anita Laster Mays, A.J., and Mary J. Boyle, J., concur.

KEY WORDS: Personal jurisdiction; improper service; motion to vacate; certified mail; regular mail.

The trial court erred when it determined that it has personal jurisdiction over the defendant when he filed a motion to vacate, supported by an affidavit rebutting the presumption of proper service, by stating that he did not live at the address where service was sent.

111583 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DAISHIA WILLIAMS

Affirmed.

Michelle J. Sheehan, P.J., Eileen T. Gallagher, J., and Sean C. Gallagher, J., concur.

KEY WORDS: Reagan Tokes Law; constitutionality.

Pursuant to this court's decision in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.) (en banc), the Reagan Tokes Law is constitutional. The trial court did not err in imposing an indefinite sentence on appellant's offense of felonious assault.

111636 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v BRIAN L. COX, JR.

111640 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v BRIAN L. COX, JR.

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111651 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v BRIAN L. COX, JR.

Affirmed.

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

KEY WORDS: *Reagan Tokes Law.*

The appellant's sentence in accordance with Reagan Tokes Law has been ruled constitutional.

111753 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MARIA WOODROW v THEODORE KRUKOWSKI, ET AL.

Affirmed.

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

KEY WORDS: *Motion for sanctions; R.C. 2323.51; frivolous conduct; wholly unwarranted in law; hearing; abuse of discretion.*

Appellant's claims were insufficient to satisfy the frivolous-conduct standard without allegations of egregious misbehavior, harassment, or a demonstration that there was no evidence supporting appellee's claims. The trial court was not required to hold a hearing on appellant's motion for sanctions and did not abuse its discretion in denying the motion.