

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 7

February 23, 2023

110655 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ELVIN MALDONADO

Affirmed.
Decision En Banc:

Sean C. Gallagher, J.; Anita Laster Mays, A.J., Mary J. Boyle, Frank Daniel Celebrezze, III, Eileen T. Gallagher, Emanuella D. Groves, Kathleen Ann Keough, Michael John Ryan, and Michelle J. Sheehan, JJ., concur; Eileen A. Gallagher, J., concurs in judgment only; Lisa B. Forbes and Mary Eileen Kilbane, JJ., dissent.

Decision of the Merit Panel:

Sean C. Gallagher, P.J.; James A. Brogan, J.,* concurs; Lisa B. Forbes, J., concurs in judgment only. (*Sitting by assignment: James A. Brogan, J., retired, of the Second District Court of Appeals)

KEY WORDS: *Crim.R. 43(A); sentencing remand; correction of entry; days-of-confinement credit.*

Affirmed. *Under Crim.R. 43(A), a defendant's presence is not required at any proceeding solely intended to vacate or delete any portion of a sentence, punishment, penalty, or other criminal sanction upon remand from a direct appeal and because no sentence was imposed de novo, the defendant is not entitled to another days-of-confinement calculation upon remand.*

111464 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DAVID B. CHISLTON

Affirmed.

Anita Laster Mays, A.J., Eileen T. Gallagher, J., and Michael John Ryan, J., concur.

KEY WORDS: *Motion to withdraw guilty plea; res judicata; consecutive sentences; R.C. 2929.14.*

On remand solely for resentencing, a trial court may not entertain a motion to withdraw a plea; a trial court's grant of a post-remand motion to withdraw a plea would essentially undo the entire appeal. Res judicata bars the appellant's claims of ineffective assistance of counsel that were based on facts in the record and were raised or could have been raised on a prior appeal. The trial court considered all of the statutory factors in accordance with R.C. 2929.14 in sentencing the appellant to consecutive sentences.

CASE DECISION LIST

111465 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
SIMON MA v ALBERTO GOMEZ, ET AL.

Affirmed.

Eileen A. Gallagher, J., and Anita Laster Mays, A.J., concur; Sean C. Gallagher, J., dissents (with separate opinion).

KEY WORDS: *Land installment contract; forfeiture; fraud; foreclosure; breach of contract; notice; voluntary satisfaction; statute of frauds; part performance; promissory estoppel; oral modification of contract.*

The vendor of a land installment contract was entitled to summary judgment against the vendee in a forfeiture action where the vendee stopped making monthly payments on the contract and stopped paying property taxes on the parcel. The vendee did not meet his burden to establish a genuine issue of material fact for trial on his defenses, which included that the vendor had failed to include certain required disclosures in the land installment contract, that the vendor had allegedly agreed orally that the vendee could postpone making payments and that the trial court should have considered issues of setoff and reimbursement before forfeiting the vendee's interest in the contract. The alleged oral agreement was barred by the statute of frauds.

The vendees also challenged the trial court's order nullifying a quitclaim deed to the subject property. We found that assignment of error to be moot because the vendor recorded the judgment before the appellants sought a stay of execution of the judgment.

111492 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TAVIN CLAY

Vacated and remanded.

Frank Daniel Celebrezze, III, P.J., Kathleen Ann Keough, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Felony sentence; R.C. 2953.28(G)(2); consecutive sentences; R.C. 2929.14(C)(4); statutory findings; clearly and convincingly supported by the record; attempted failure to comply; R.C. 2921.331(D); necessary for the protection of the public; not disproportionate to the danger posed by the offender; proportionality finding; vacate and remand for resentencing; postrelease control; R.C. 2967.28(C).*

The trial court did not make the requisite findings to support consecutive sentences under R.C. 2929.14(C) by failing to make the full proportionality finding and failing to consider whether consecutive sentences were necessary for appellant's punishment. The court further erred by ordering that appellant be subject to

CASE DECISION LIST

(Case 111492 continued)

postrelease control for a greater period than allowed by statute for a fourth-degree felony.

111513 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v REGINA L. LASHLEY

Affirmed.

Sean C. Gallagher, J., Anita Laster Mays, A.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: Arson; violating a protection order; manifest weight; fire; vehicles; eyewitness; identification; testimony; credible.

Affirmed. Appellant's convictions for arson and violating a protection order, which arose from an incident where the victim's vehicles were intentionally set on fire while a protection order was in place, were not against the manifest weight of the evidence. Credible eyewitness identification testimony from the victim along with other testimony and evidence consistent therewith were enough to withstand the manifest-weight challenge in favor of conviction.

111521 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ALEXANDRA MORRIS v APRIL MORRIS, ET AL.

Affirmed.

Emanuella D. Groves, J., Eileen T. Gallagher, P.J., and Michael John Ryan, J., concur.

KEY WORDS: Civ.R. 60(B), relief from final judgment; res judicata.

Res judicata bars relitigation of a matter that was raised or could have been raised on direct appeal. As this is the second appeal, and appellant raised the issue of the trial court's error in determining the jury's verdict during the first appeal, res judicata bars relitigation of this issue.

111576 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MARIO ALLEN

Affirmed.

Eileen T. Gallagher, J., Eileen A. Gallagher, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: Reagan Tokes Law; felony; sentence, guilty plea;

CASE DECISION LIST

(Case 111576 continued)

constitutional challenge; separation of powers; indefinite sentence; due process; jury.

Defendant's constitutional challenge to the Reagan Tokes Law is foreclosed by judicial precedent, and thus, defendant's sentence pursuant to the Reagan Tokes Law is not a violation of his constitutional rights.

111605 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOHNNIE A. PIERCE

Affirmed.

Kathleen Ann Keough, P.J., Eileen A. Gallagher, J., and Lisa B. Forbes, J., concur.

KEY WORDS: Sufficient evidence; manifest weight; felonious assault; credibility; intoxication; assault of a police officers; incidental contact; maximum sentences; consecutive sentences; Reagan Tokes Law.

Appellant's conviction for felonious assault upheld where the evidence showed that the appellant caused the victim serious physical harm when the victim suffered a laceration to his face. The victim's state of intoxication did not render the appellant's conviction against the manifest weight of the evidence because a defense witness corroborated the victim's testimony that the appellant assaulted the victim. Appellant's conviction for assault of a police officer upheld where evidence showed that the appellant's conduct and contact with the officer was not merely incidental but deliberate when he used two hands to push the officer, causing her to fall. The record supported the trial court's decision to impose maximum and consecutive sentences.

111638 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
DENISE NADIN v CLEVELAND CLINIC FOUNDATION, ET AL.

Affirmed.

Anita Laster Mays, A.J., and Sean C. Gallagher, J., concur; Kathleen Ann Keough, J., dissents (with separate opinion).

KEY WORDS: R.C. 2313.17(B)(9); R.C. 2313.17(D); juror challenge for cause.

The trial court applied the proper standard to appellant's juror challenge for cause and did not abuse its discretion.

CASE DECISION LIST

111648 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v GREGORY WORLEY

Affirmed.

Eileen A. Gallagher, J., Kathleen Ann Keough, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Felony sentencing; R.C. 2953.08(G)(2); consecutive sentences; R.C. 2929.14(C)(4); plain error; clear and convincing evidence; proportionality; danger the offender poses to the public; rape; R.C. 2907.02(A)(2); attempt; R.C. 2923.02; failure to verify address; R.C. 2950.06; offenses committed on bond; offenses committed on postrelease control; capias.*

We affirmed the trial court's imposition of consecutive sentences resulting in an aggregate 11.5-year prison sentence. The defendant completed a 13-year prison sentence for a sexual battery and a rape committed in 2004-2005. These assaults targeted two different women, both strangers to the defendant. Upon the defendant's release, he was immediately taken back into custody for a rape committed in 2006 against a third female victim. The charge was based on new forensic tests performed while the defendant was in prison. While on bond in that case, the defendant committed two misdemeanors - attempted drug possession and endangering children - and a felony, attempted felonious assault. He then failed to appear for trial on the rape charge and thereafter attempted to fail to verify his address as required because of the previous rape conviction.

The defendant was taken back into custody and pleaded guilty to the 2006 rape, the misdemeanors, the attempted felonious assault and the attempted failure to verify his address. The trial court imposed a prison sentence of 10 years on the rape count and a sentence of 18 months on the failure-to-verify count. The trial court ran the sentences consecutively, making the required findings under R.C. 2929.14(C)(4). We affirmed the imposition of consecutive sentences because, after a thorough review of the record, we were not left with the firm conviction or belief that the consecutive sentences and an aggregate 11.5-year sentence were disproportionate to the danger the defendant posed to the public. While the defendant completed beneficial programming and classes while incarcerated and secured employment upon his release, his actions since being released from prison - including the attempted felonious assault, another crime of violence against a woman - present significant concerns regarding the danger the defendant poses to the public. The defendant did not contest any of the other R.C. 2929.14(C)(4) findings.

CASE DECISION LIST

111701 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CONTEMPT OF: S.R.

Affirmed.

Eileen T. Gallagher, P.J., Emanuella D. Groves, J., and Michael John Ryan, J., concur.

KEY WORDS: *Contempt of court; civil stalking protection order; clear and convincing evidence; abuse of discretion.*

Clear and convincing evidence supported the trial court's finding that respondent violated the civil stalking protection order.

111716 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ROMAINE TOLBERT

Affirmed.

Frank Daniel Celebrezze, III, P.J., Kathleen Ann Keough, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Resentencing; limited remand; R.C. 2953.08(G)(2); felony sentence; R.C. 2929.14(C); consecutive sentences; statutory findings; clearly and convincingly supported by the record; sentencing range; separate sentence for each offense; improper purpose; sentencing-package doctrine.*

The trial court properly conducted resentencing within the narrow context of determining whether to impose consecutive sentences and making findings related thereto. Further, the trial court did not impose sentences under a sentencing package. Finally, arguments regarding the sentences that were not raised in the first appeal are therefore barred by res judicata.

111719 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CARLOS DOTSON

Affirmed.

Mary Eileen Kilbane, J., Frank Daniel Celebrezze, III, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Reagan Tokes Law; constitutional; indefinite sentence.*

The trial court's imposition of an indefinite sentence pursuant to the Reagan Tokes Law was not a violation of appellant-defendant's constitutional rights.

CASE DECISION LIST

111782 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JULIUS POTTER

Reversed and remanded.

Frank Daniel Celebrezze, III, P.J., Michelle J. Sheehan, J., and Michael John Ryan, J., concur.

KEY WORDS: *S.B. 201; Reagan Tokes Law; indefinite sentencing; constitutionality; R.C. 2953.08(B)(2).*

Judgment reversed and remanded for resentencing. The trial court's judgment was contrary to law because it failed to sentence 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.

111875 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v MICHAEL DUDAS

Affirmed.

Eileen A. Gallagher, P.J., Mary Eileen Kilbane, J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Petition for postconviction relief; R.C. 2953.21(A)(2)(a); R.C. 2953.23(A); timely filed; delayed appeal; jurisdictional; findings of fact and conclusions of law; R.C. 2953.21(D), (H).*

Where a defendant is granted leave to file a delayed appeal, a petition for postconviction relief under R.C. 2953.21 must be filed within 365 days from the expiration of the time for filing a timely appeal. Because petition for postconviction relief was not timely filed, trial court was not required to make findings of fact and conclusions of law before denying petition for postconviction relief.