

CASE DECISION LIST

March 16, 2023

111291 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v PAUL MULLINS

Vacated and remanded.

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

KEY WORDS: *Crim.R. 11 guilty plea; knowing, intelligent, and voluntary; prejudice; complete failure; State v. Dangler, 162 Ohio St.3d 1, 2020-Ohio-2765, 164 N.E.3d 286; OVI; repeat OVI offender specification; third-degree felony; R.C. 4511.19; R.C. 2929.14; R.C. 2941.1413; R.C. 2929.13.*

Judgment is vacated and remanded. Defendant's guilty plea is not knowing, intelligent, and voluntary because he was misinformed regarding the possible sentence he faced and the nature of his charges. Here, the court failed to correct the mistake in defendant's sentence and failed to advise defendant of the full nature of his charges. The omissions and the misinformation by the trial court demonstrate a complete failure to comply with Crim.R. 11(C) and eliminate the defendant's burden to demonstrate that he was prejudiced by the trial court's error. Because defendant's plea is vacated, any error regarding his sentence is moot.

111459 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
BEST MOTORS, LLC v CHEICK KABA, ET AL.

111713 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
BEST MOTORS, LLC v CHEICK KABA

Reversed and remanded.

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

KEY WORDS: *Summary judgment Civ.R. 56; App.R. 12.*

The trial court erred in granting summary judgment when issues of material fact remained regarding whether the defendant was involved in the sale of a stolen vehicle. The evidence submitted by the plaintiff in support of its motion for summary judgment showed questions of material fact. There was no evidence defendant was involved in the sale of the car other than the defendant owner's affidavit and substantial evidence that created questions of material fact.

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111466 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ADAM RODRIGUEZ

Affirmed in part, reversed in part, and remanded for resentencing.

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

KEY WORDS: *Felony sentencing; contrary to law; indefinite; Reagan Tokes; mandatory; judicial release; earned credit.*

The trial court's imposition of an indefinite prison term pursuant to the Reagan Tokes Law was not unconstitutional. The trial court clearly and convincingly failed to comply with the applicable sentencing statutes by imposing a mandatory prison term on the defendant's third-degree felony conviction.

111531 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CORNEL PENLAND

Affirmed.

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

KEY WORDS: *Rape; sufficiency; manifest weight; evidence; credibility; impeachment; abuse of discretion; ineffective assistance of counsel; confrontation; prosecutorial misconduct; closing arguments; plain error; cross-examination; preindictment delay.*

Defendant's rape conviction is supported by sufficient evidence and is not against the manifest weight of the evidence. Defendant was not deprived of his right to confront his accuser. Defense counsel did not render ineffective assistance of counsel by failing to disclose his impending suspension from the practice of law, failing to file a motion to dismiss based on prejudicial preindictment delay, and failing to effectively cross-examine the state's witnesses. Defendant's substantial rights were not prejudicially affected by the prosecution's closing arguments.

111555 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JASON L. RAMSEY

Affirmed.

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

KEY WORDS: *Amended indictment; Crim.R. 7; grand jury evidence;*

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disclosure of grand jury transcripts; particularized need; insufficiency of the evidence; Crim.R. 29 motion for judgment of acquittal; and manifest weight of the evidence.

The trial court's grant of the state's motion to amend the dates of the indictment was in accordance with Crim.R. 7 and did not prejudice the defendant and, therefore, did not constitute an abuse of discretion. Absent the defendant demonstrating a particularized need to review the grand jury transcripts, the trial court's refusal to disclose the transcripts was not an abuse of discretion. Where the evidence was sufficient to support defendant's convictions at the close of the state's case-in-chief and following the defendant's case-in-chief, defendant's insufficiency of the evidence and Crim.R. 29 motions for judgment of acquittal lacked merit. A review of the record demonstrated that the trier of fact did not lose its way and create a manifest miscarriage of justice when it convicted defendant.

111606	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v ANTHONY JOHNSON			

111612	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v ANTHONY JOHNSON			

Affirmed.

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

KEY WORDS: Crim.R. 33 motion for new trial; hearing on motion for a new trial; res judicata; newly discovered evidence; Petro factors; DNA testing; lost evidence; abuse of discretion.

The trial court did not abuse its discretion in denying appellant's motion for a new trial. The evidence appellant submitted in support of his motion for new trial did not meet the Petro factors and was not newly discovered evidence. The matter of the missing evidence for which appellant wanted DNA testing completed had previously been litigated. The affidavit of appellant's proposed expert in eyewitness testimony was not newly discovered evidence. The appellant did not show that an expert was not available to him at trial and there was not a strong probability that the results of the trial would have been different if an expert on eyewitness identification had testified at his trial. The multiple affidavits of the person who claimed he committed the crimes for which appellant was convicted do not constitute newly discovered evidence. The other person was known to appellant prior to his trial and defense strategy at trial was that this other person committed the crimes, his affidavits were inconsistent, and four victims identified appellant as the person who committed the crimes.

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111637 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DONALD J. ADAMS

Affirmed.

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

KEY WORDS: *Victim-impact statement; R.C. 2930.14; failure to object; plain error; consecutive sentencing; R.C. 2929.14(C)(4); ineffective assistance of counsel.*

The court complied with R.C. 2930.14 by permitting and considering victim-impact statements. The court made the appropriate consecutive sentencing findings under R.C. 2929.14(C)(4) and incorporated them into the sentencing journal entry. Counsel was not ineffective for failing to object to the victim-impact statements.

111656 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DAVID A. WALKER

Affirmed.

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

KEY WORDS: *Megan's Law; classification; sexual predator; manifest weight; record; relevant; reliable; abuse of discretion; pattern of conduct; behavior; nature of offense; future; sexually oriented offense.*

The trial court was within its discretion to consider relevant information gathered during the underlying police investigation when making its sexual predator determination. The trial court's judgment classifying appellant as a sexual predator is supported by competent, credible evidence.

111659 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v GUY JARRETT

Affirmed.

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

KEY WORDS: *Juvenile offender; life imprisonment; age as a mitigating factor; postconviction-relief petition; cruel and unusual punishment.*

The juvenile offender's postconviction-relief petition was untimely.

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(Case 111659 continued)

Even if the motion had been timely, his Eighth Amendment claim would be barred by res judicata. Moreover, the rule announced by the Supreme Court of Ohio in State v. Patrick is procedural and may not be applied retroactively.

111661	CLEVELAND MUNI. CITY OF CLEVELAND v YAHYA KHAMIES	C	Criminal Muni. & City
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Affirmed.

Anita Laster Mays, A.J., Eileen A. Gallagher, J., and Mary J. Boyle, J., concur.

KEY WORDS: *C.C.O. 433.01; operating a vehicle under the influence; C.C.O. 431.34; failure to control; ineffective assistance of counsel; R.C. 2317.02(B)(2); motion to suppress; App.R. 9; inaudible transcript segments.*

The decision of defense counsel not to seek suppression of medical records secured under R.C. 2317.02(B)(2) does not constitute ineffective assistance. The record does not support a reasonable probability that the motion would have been successful if made and that the decision affected the outcome of the case.

It is the duty of the appellant to provide a complete transcript under App.R. 9. The inaudible portions of the record did not prevent a thorough and meaningful review on appeal, and appellant has failed to demonstrate prejudice.

111685	COMMON PLEAS COURT STATE OF OHIO v ANTHONY MITCHELL	A	Criminal C.P.
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Affirmed.

Lisa B. Forbes, J., Anita Laster Mays, A.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *R.C. 2929.14(C)(4); consecutive sentences.*

The trial court did not err by imposing consecutive sentences because the trial court made the requisite findings and they are supported by the record.

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111688 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
KENNETH PIKE, ET AL. v PETER W. WILSON, ET AL.

Affirmed.

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

KEY WORDS: *Securities fraud; aggravated theft; restitution; financial sanctions; R.C. 2929.18; termination of community-control sanctions; R.C. 2929.15; civil judgment; judgment on the pleadings; Civ.R. 12(C); the absurd result principle; double-jeopardy protections.*

Judgment affirmed. *Appellant pled guilty to securities fraud and aggravated theft after collecting money from three victims, promising returns on their investments. Appellant was sentenced to five years of community control and required to pay restitution to the victims. Appellant's five years of community control elapsed and appellant had not paid restitution. Thereafter, the victims reduced the trial court's order to pay restitution to a civil judgment and filed a creditor's bill against appellant. The victims prevailed on a motion for judgment on the pleadings and appellant was ordered to pay \$99,978.78 plus any interest to the victims. On appeal, appellant suggested that the trial court erred in granting the victim's motion for judgment on the pleadings, arguing that (1) he should not be required to pay the restitution since he was released from community control, and (2) that the civil judgment violated his double-jeopardy protections. We reject appellant's contentions and affirm the judgment of the trial court.*

111734 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOSEPH MICHAEL YAUGER

Affirmed.

Frank Daniel Celebrezze, III, P.J., and Michelle J. Sheehan, J., concur; Michael John Ryan, J., concurs in part and dissents in part (with separate opinion).

KEY WORDS: *Community-control sanctions; grand theft; R.C. 2929.19(B); notification requirements; Crim.R. 36; consecutive sentences; R.C. 2929.14(C)(4); nontechnical violation of community-control sanctions; R.C. 2929.15(B)(1)(c)(ii).*

Judgment affirmed. *The trial court did not err in imposing a 36-month consecutive prison sentence where the appellant was properly notified of the sentence prior to its imposition. Additionally, the record supported that the trial court did not err in imposing consecutive sentences and that appellant's community-control violation was nontechnical.*

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111756 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
TAMELA LEE v BATH MANOR LIMITED PARTNERSHIP, ET AL.

Reversed and remanded.

Lisa B. Forbes, J., and Eileen A. Gallagher, J., concur; Kathleen Ann Keough, P.J., concurs (with separate opinion).

KEY WORDS: *Motion to compel arbitration; R.C. 2711.03; hearing; enforceability; unconscionable.*

The trial court erred when it failed to hold a hearing prior to ruling on appellants' motion to compel arbitration when the issue of enforceability was raised, the appellants specifically requested a hearing, and no evidence was submitted to the trial court on the issue of enforceability.

111763 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DANIEL JEFFREY

Affirmed in part, vacated in part and remanded.

Emanuella D. Groves, J., Anita Laster Mays, A.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Manifest weight; double jeopardy; allied offenses of similar import.*

Convictions for felonious assault, abduction, and domestic violence were not against the manifest weight of the evidence where a jury is permitted to believe, disbelieve, or accept part of the testimony of a particular witness. A review of the entire record disputes appellant's contention that the victim was a pathological liar who lied throughout her testimony.

Furthermore, appellant's convictions for felonious assault, abduction, and domestic violence did not violate double jeopardy and were not allied offenses of similar import requiring one sentence. The record established that the crimes, with the exception of the two Counts of abduction, were committed separately, permitting the trial court to impose sentences for each.

However, it was an error for the trial court to sentence appellant on each of two counts of abduction, which the trial court had properly merged. As allied offenses of similar import, the state should have been allowed to choose which count they wished to proceed on and the trial court should have sentenced appellant to only one count of abduction. Accordingly, the sentence is vacated as to Counts 3 and 4 and remanded for the state to elect which count it wishes for sentencing to proceed.

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111779 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v JERMAINE LEVY

Affirmed.

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

KEY WORDS: *Postconviction relief; untimely; successive; res judicata; right to counsel; waiver of counsel; Crim.R. 44; void; voidable; Ogle; Harper; Henderson; jurisdiction; plain error.*

Defendant contended that his waiver of counsel was deficient and thus, he was deprived of his constitutional right to counsel. As such, the defendant maintained that under Ogle, this deprivation of counsel caused the trial court to lose jurisdiction over the case and thus, Harper and Henderson did not apply, and his conviction is void. This court found that the trial court did not err in denying defendant's emergency motion to vacate void judgment because even if res judicata did not bar his claim, and even if the defendant demonstrated that his constitutional right to counsel was violated, he has not established that this violation rose to the level of plain error requiring correction.

111801 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CRYSTAL CARTWRIGHT

Affirmed.

Anita Laster Mays, A.J., Michelle J. Sheehan, J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Reagan Tokes; constitutionality.*

The trial court imposed an indefinite prison sentence pursuant to the Reagan Tokes Law. Appellant's arguments that the Reagan Tokes Law is unconstitutional were overruled in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.). Appellant's sentence is affirmed.

111805 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
JAMES E. PIETRANGELO, II v CORRINNE HUDSON

Affirmed.

Mary J. Boyle, J., Anita Laster Mays, A.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Summary judgment; motion for directed verdict; Civ.R. 56; Civ.R. 50; de novo; negligence; proximate cause; causal*

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(Case 111805 continued)

connection; common knowledge; opening statement.

Judgment affirmed. The trial court properly denied Pietrangelo's motion for summary judgment because disputed facts, including prior injuries, precluded summary judgment and Pietrangelo failed to support his claim with any expert opinions. The trial court properly granted Hudson's motion for directed verdict. Pietrangelo was unable to sustain his negligence action because his injuries required expert testimony to show proximate cause and he could not present any expert medical testimony with respect to this issue.

111880 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DAVID DOTSON

Reversed and remanded.

Michael John Ryan, J., Frank Daniel Celebrezze, III, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *State's appeal; Reagan Tokes Law, S.B. 201; contrary to law.*

The trial court's sentence was contrary to law because it failed to sentence appellant in accordance with the Reagan Tokes Law, which this court found to be constitutional in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 538 (8th Dist.).

111899 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TIMOTHY A. BELL

Affirmed.

Eileen A. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Reagan Tokes Law; constitutionality.*

Appellant argued that his indefinite sentences imposed pursuant to the Reagan Tokes law were unconstitutional on the grounds the sentences violated his right to a jury trial, his right to due process, and the doctrine of separation of powers. Because the court overruled these arguments in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.) (en banc), the judgments of the trial court are affirmed.

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112055	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v DAMIEN L. PETERSON			

Affirmed.

Lisa B. Forbes, J., Anita Laster Mays, A.J., and Emanuella D. Groves, J., concur.

KEY WORDS: Pro se litigant; postconviction-relief petition; res judicata.

The trial court did not err by denying pro se litigant's postconviction-relief petition because it was barred by the doctrine of res judicata.