

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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**November 9, 2023**

**111970** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v HERNAN GALVEZ VILLAVICENCIO

Reversed and remanded.

Sean C. Gallagher, J., Anita Laster Mays, A.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Aggravated assault; impeachment evidence; Evid.R. 611; Evid.R. 616; confrontation of a witness.*

**Reversed.** *The trial court erred by precluding the defendant from introducing evidence of the victim's continued contact with the defendant following the altercation at issue and her conduct in facilitating an assault on the defendant days after the victim and the defendant's altercation because both lines of inquiry were permitted under the evidentiary rules pertaining to impeachment evidence.*

**112335** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
NEXGEN COASTAL INVESTMENTS, LLC v ISSA CONSTRUCTION AND DEVELOPMENT, LLC

Affirmed.

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

**KEY WORDS:** *Breach of contract; settlement; memorandum of understanding; motion to enforce; abuse of discretion; evidentiary hearing; dismissal.*

**The trial court did not err or abuse its discretion when it reduced the parties' settlement agreement to a journal entry, entered a judgment for the plaintiff, and dismissed the case with prejudice. Because the terms of the agreement were not disputed, the trial court was not required to hold an evidentiary hearing.**

**112383** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v RASHAD BILAH

Affirmed in part; vacated in part; remanded.

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

**KEY WORDS:** *Trafficking; drug possession; ineffective assistance of counsel; elements; knowledge; prejudice; reasonable probability; guilt; fentanyl; fentanyl-related compound; snow;*

(Case 112383 continued)

**melted; liquid; mixture; relative weight; sufficiency; first-degree felony; weight; 20 grams; insufficient.**

**Vacated appellant's conviction and sentence for a count of drug possession as a felony of the first degree and remanded the matter to the trial court to enter a judgment of conviction for drug possession as a felony of the second degree and to sentence appellant accordingly on that count. There was insufficient evidence that the amount of fentanyl in question equaled or exceeded 20 grams when some of the fentanyl that was collected by police was mixed with snow that melted to form a liquid in the vials that were examined and the relative weight of the fentanyl in the vials was not determined. Appellant failed to demonstrate ineffective assistance of counsel. The trial court's judgment was otherwise affirmed.**

**112436** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v JERRY LOCKHART

Affirmed.

Michelle J. Sheehan, J., Anita Laster Mays, A.J., and Lisa B. Forbes, J., concur.

**KEY WORDS: Reagan Tokes Law; constitutionality; R.C. 2929.144; plain error; presumption of concurrent sentence; R.C. qualifying offense.**

***Offender pled guilty to five felonies of the second degree, each of which were qualifying offenses subject to an indefinite sentence pursuant to the Reagan Tokes Law. The trial court imposed a sentence of 8 to 12 years on one of the offenses, 2 years on three others and ordered these sentences to be served consecutively. On the remaining offense the trial court imposed a 4 year sentence and ordered the offense to served concurrently. In the aggregate, defendant received a 14 to 18 year sentence. The journal entry of conviction reflects that the 8 to 12 year sentence was to be served consecutively to the three 2-year sentences, but does not reflect the 4-year sentence was to be served concurrently. At the sentencing hearing, offender objected only to application of the Reagan Tokes Law.***

***Offender argued that the Reagan Tokes Law infringed his right to trial, his right to due process, and violated the separation-of-powers doctrine. The arguments were not well taken because these arguments were rejected in State v. Hacker, Slip Opinion No. 2023-Ohio-2535, in which the Ohio Supreme Court found the Reagan Tokes law constitutional.***

***Offender argued the trial court committed plain error because it did not state in the journal entry that the 4-year sentence was to be served concurrently. Because sentences are presumed to be served concurrently, the trial court was not required to state the 4-year sentence was to be served concurrently.***

(Case 112436 continued)

**Offender argued the trial court committed plain error because it did not state in the journal entry which count it designated as the qualifying offense under R.C. 2929.144 from which it calculated the indefinite sentence. The trial court properly imposed the indefinite offense on the longest sentence it imposed for the qualifying offenses pursuant to R.C. 2929.144(B)(2). As such, the trial court properly indicated which offense was the qualifying offense under the Reagan Tokes Law.**

**112442** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v JOSE TRUJILLO

Affirmed and remanded.

Michael John Ryan, J., Frank Daniel Celebrezze, III, P.J., and Sean C. Gallagher, J., concur.

***KEY WORDS: Consecutive sentences; sexual abuse; rape; kidnapping; gross sexual imposition; sexual battery; sufficiency of evidence; manifest of evidence; sentencing judge not the same judge who presided over the trial; ineffective assistance of counsel; remorse; cumulative errors; prosecutorial misconduct.***

***The trial court made the statutorily mandated findings under R.C. 2929.14(C)(4). The record clearly and convincingly supports those findings. Trial counsel was not ineffective for not requesting that the judge who presided over the trial sentence him. Counsel's decision to not seek a transfer of the case was a sound tactical decision that we will not second guess.***

***The trial court did not improperly consider remorse in sentencing appellant.***

***Because there were not multiple instances of error, the cumulative-error doctrine is inapplicable to this case.***

***The assistant prosecuting attorney's statements during closing argument did not rise to prosecutorial misconduct.***

***Sufficient evidence supported the rape conviction of one of the victims.***

***The convictions relative to all the victims were not against the manifest weight of the evidence.***

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**112638** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
BRENDA J. HINES v DIRECTOR OF THE OHIO DEPT. OF JOB & FAMILY SERVICES

Affirmed.

Kathleen Ann Keough, P.J., Eileen A. Gallagher, J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Unemployment compensation benefits; remote; telework; work-from-home; restriction; medical condition; accommodation; R.C. 4141.29(A)(4); available for suitable work; R.C. 4141.29(F).*

*Commission's decision upheld when some evidence exists in the record to support that the applicant was not available for suitable work as required under R.C. 4141.29(A)(4) when she restricted her job search to only work-from-home positions due to a temporary medical condition. Record reflects that the Commission considered the R.C. 4141.29(F) suitability factors in making its decision.*