

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 6

November 16, 2023

111927 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAYMARLON HAYES

Modified and remanded.

Anita Laster Mays, A.J., and Eileen A. Gallagher, J., concur. Eileen T. Gallagher, J., concurs in judgment only (with separate opinion).

KEY WORDS: *R.C. 2929.14; consecutive sentences; aggregate sentence; modification; R.C. 2953.08(G)(2)(a).*

Appellant's challenge to the trial court's imposition of consecutive sentences is sustained. This court does not hold a firm conviction and belief that the evidence supports the imposition of the aggregate sentence imposed, and the sentence is modified pursuant to this opinion. State v. Gwynne, Slip Opinion No. 2022-Ohio-4607.

112114 CLEVELAND MUNI. C Criminal Muni. & City
CITY OF CLEVELAND v VESTA CORPORATION

Dismissed.

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

KEY WORDS: *Cleveland codified ordinances 209.01; failure to abate a nuisance of refuse; minor misdemeanor; motion to dismiss; imposition and payment of fine and court costs; voluntary satisfaction of judgment; collateral legal disability; appeal moot.*

Defendant voluntarily paid the fee and court costs imposed after the court found it guilty of a minor misdemeanor, it did not file a motion for stay of execution of judgment, and it failed to establish a collateral legal disability as a result of its misdemeanor conviction. Appeal dismissed as moot.

112305 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ED DEBARR v CITY OF CLEVELAND

Reversed.

Emanuella D. Groves, J., Frank Daniel Celebrezze, III, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Political subdivision immunity; negligence; water main break; R.C. 2744.02(B)(2).*

CASE DECISION LIST

(Case 112305 continued)

Trial court erred in denying appellant's motion for summary judgment where appellee failed to establish that the appellant's conduct was negligent and breached the blanket immunity granted to a political subdivision under R.C. Chapter 2744.

112317 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: L.S.

Affirmed.

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

KEY WORDS: *Delinquent; R.C. 2907.02(A)(2); rape; R.C. 2905.01(A)(4); kidnapping; sufficiency and manifest weight of the evidence; merger; ineffective assistance of counsel.*

The juvenile court did not err in finding appellant delinquent. The finding was based on sufficient evidence and was not against the manifest weight. Counsel was not ineffective for failing to object to merger of the kidnapping and rape counts where the juvenile court's statement that the kidnapping count was "referred" to the rape count served to effect a merger of the counts and the juvenile court clarified the merger in a corrected journal entry.

112458 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v WILLIAM DIX

Affirmed.

Michelle J. Sheehan, J., Eileen A. Gallagher, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Attempted rape; gross sexual imposition; sufficiency of evidence; manifest weight; prosecutorial remarks about the defendant's silence; ineffective assistance of counsel.*

Appellant was charged with and convicted of attempted rape and gross sexual imposition after a jury trial. His ten-year-old biological daughter revealed at school that, when she was seven, her father engaged in sexual activity with her. She testified at trial that her father "put his pee-pee in her butt" when she was staying with him at his house. The SANE nurse testified that during the examination, the victim stated her father put his penis "in her buttole." Having reviewed the record, we conclude appellant's convictions are supported by sufficient evidence and not against the manifest weight of the evidence. Furthermore, our review of the remarks by the prosecutor at the closing argument indicates they were not impermissible comments about appellant's failure to testify but a permissible reference to the uncontradicted evidence presented by the state.

CASE DECISION LIST

112459 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
U.S. BANK NATIONAL ASSOCIATION v INGA GOLUBITSKY, ET AL.

Dismissed.

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

KEY WORDS: *Foreclosure; motion to stay execution of judgment; failure to file stay and post bond; appeal moot.*

This appeal from a judgment for foreclosure is moot because the defendants failed to obtain a stay and failed to post bond. Additionally, the property was sold, the sale was confirmed, and the proceeds were distributed.

112501 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v VALENTINO FLETCHER

Affirmed in part and dismissed in part.

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

KEY WORDS: *Reagan Tokes Law; trafficking in drugs; forfeiture of automobile in drug case; jurisdiction.*

In July 2023, the Ohio Supreme Court issued its decision in State v. Hacker, Slip Opinion No. 2023-Ohio-2535, finding the Reagan Tokes Law constitutional and determining that, relevant to this case, the law does not violate the separation-of-powers doctrine or the right to due process. The arguments presented in this case do not present novel issues or any new theory challenging the constitutional validity of any aspect of the Reagan Tokes Law left unaddressed by the Ohio Supreme Court's decision in Hacker. Appellant's sentence is affirmed.

The trial court did not have jurisdiction to consider appellant's motion to return forfeited property because it was filed after his appeal had been filed. Thus, the trial court denied the motion without considering its merits. Appellate courts do not decide issues for the first time on appeal. The appeal is dismissed as it relates to the appellant's challenge of the denial of the motion for return of the forfeited automobile.

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 4 of 6

112513 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v WILLIE HICKS

Reversed and remanded.

Frank Daniel Celebrezze, III, P.J., and Emanuella D. Groves, J., concur; Sean C. Gallagher, J., concurs (with separate opinion).

KEY WORDS: *Dismissal of indictment; outrageous government conduct defense; motion to suppress; fourth amendment; probable cause; reasonable suspicion; consensual police encounter; investigative detention; Terry stop; arrest.*

Judgment reversed and remanded. The trial court erred in dismissing the indictment pursuant to the defense of “outrageous government conduct” because the doctrine was inapplicable based on the facts elicited at the hearing on the motion to dismiss. The trial court also erred in applying the more demanding standard of “probable cause” during the suppression hearing when, based on the facts and circumstances presented, the seizure amounted to a Terry stop that required the trial court to apply the “reasonable suspicion” standard.

112527 BEDFORD MUNI. G Civil Muni. & City
BRYANT M PROPERTIES LLC v LAVERA GRAVES

Affirmed.

Lisa B. Forbes, J., Mary Eileen Kilbane, P.J., and Sean C. Gallagher, J., concurs.

KEY WORDS: *Complaint for unpaid rent and damages; pro se litigant; App.R. 16(A)(7); App.R. 12(A)(2); failure to cite to the record; appellate brief; failure to cite legal authority; failure to argue assignments of error separately; failure to file transcript; App.R. 9(B); presumption of regularity.*

Pro se appellant failed to cite to the lower court record, failed to cite relevant legal authority; failed to identify an alleged error by the municipal court; and failed to file a transcript. Judgment affirmed.

112599 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANTHONY PLOZAY

Dismissed and remanded.

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

CASE DECISION LIST

(Case 112599 continued)

KEY WORDS: Anders brief; motion to withdraw; Crim.R. 11; sentence contrary to law; R.C. 2921.331(B); failure to comply with signal of police; R.C. 2921.331(E) and 4510.02(A)(1); mandatory Class One lifetime license suspension; R.C. 2929.18(A)(3)(c); imposition of maximum fine; R.C. 2923.02 and 2921.31(A); attempted obstructing official business; R.C. 2929.11; purposes and principles of felony sentencing; R.C. 2929.12; sentencing factors.

Appellate counsel's motion to withdraw filed in compliance with *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), is granted and the appeal is dismissed after a thorough review of the record fails to reveal any meritorious arguments for appeal. Crim.R. 11(C) does not require advisement of the right to be tried without a jury. The sentence was not contrary to law because the sentence was within the statutory range, and the trial court considered the purposes and principles of felony sentencing and sentencing factors. The imposition of a Class One lifetime driver's license suspension for a second felony failure to comply is mandated by law. The fact that an indigent defendant was appointed counsel does not bar the imposition of a fine.

The case is remanded for the trial court to issue nunc pro tunc entries for the plea and sentencing entries to accurately reflect that the defendant pleaded guilty to and was convicted of the amended charge of attempted obstructing official business.

112752 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
J.T. v K.S.

Affirmed.

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

KEY WORDS: *R.C. 2903.214; civil stalking protection order; failure to object.*

Because appellant failed to timely filed objections pursuant to Civ.R. 65.1(G), appellant waived any argument challenging the trial court's decision to deny the civil protection stalking order on appeal. This court declines to address the merits of this appeal and overrules appellant's sole assignment of error.

112762 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v ANTHONY COPELAND

Affirmed.

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

CASE DECISION LIST

(Case 112762 continued)

KEY WORDS: Motion to vacate sentence; void; voidable; Harper; Henderson; res judicata.

Appellant's postconviction claims that his sentences are contrary to law involved a voidable judgment, should have been raised on direct appeal, and are now barred by res judicata.