

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 10

October 26, 2023

112024 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v VINCENT HOWARD

Affirmed.

Lisa B. Forbes, J.; Anita Laster Mays, A.J., concurs with the majority opinion and with the separate opinion; Kathleen Ann Keough, J., concurs (with separate concurring opinion).

KEY WORDS: *Forcible rape; forcible gross sexual imposition; sufficiency of the evidence; digital penetration; manifest weight of the evidence; prosecutorial misconduct; denial of continuance; meaningful opportunity to present a complete defense; ineffective assistance of counsel.*

Defendant's convictions of three counts of forcible rape and one count of forcible gross sexual imposition are affirmed. There was sufficient evidence in the record to support convictions for forcible-sexual offenses. The defendant took the victim's clothes off and got on top of her in his bed. He held an authoritative position over her, because he was like a "godfather" figure to her. The victim did not fight defendant off because of his size and she felt paralyzed. He turned her on her stomach and penetrated her vagina. Furthermore, the convictions were not against the manifest weight of the evidence.

The prosecutor's comments and questions about "DNA" and "semen" were improper, because there was no evidence introduced at trial about DNA or semen. However, based on the totality of the evidence in the record, we cannot say that these improper comments and questions affected the outcome of defendant's trial. Defendant argues that the denial of his continuance deprived him of a meaningful opportunity to present a complete defense, because he was prohibited from presented corroborating evidence regarding his erectile dysfunction. The record shows that he requested the last-minute continuance two years after he was indicted in this case, and we cannot say that the court abused its discretion by denying this request.

Because defendant's counsel's performance was not deficient, as shown by the resolution of his other assignments of error, we cannot say that counsel was ineffective.

112111 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
SUSAN BOGGS, STATE EX REL., ET AL. v CITY OF CLEVELAND

Affirmed.

Mary J. Boyle, J., Michelle J. Sheehan, P.J., and Lisa B. Forbes, J., concur.

CASE DECISION LIST

(Case 112111 continued)

KEY WORDS: Motion for summary judgment; writ of mandamus; taking; appropriation; eminent domain; standing; redressability; municipality; outside municipal corporate limits; Section 19, Article I of the Ohio Constitution; Section 3, Article XVIII of the Ohio Constitution; R.C. 719.02; R.C. 719.01.

Relators lacked standing to obtain a writ of mandamus against Cleveland to compel it to begin appropriation proceedings of their property, which is located outside of its municipal corporate limits. Section 19, Article I, of the Ohio Constitution, as limited by Section 3, Article XVIII, does not provide Cleveland with the power of eminent domain beyond its geographical limits. Nor is the appropriation of Relators' property within the statutory authority conferred by R.C. 719.02, which allows municipalities to acquire property outside of its limits, when reasonably necessary, for the specific purposes set forth in R.C. 719.01. Therefore, the trial court correctly ruled that Relators' claim is not redressable by a writ of mandamus and concluded that Relators lacked standing to bring the action. Accordingly, the trial court properly granted summary judgment in Cleveland's favor.

112127	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v ALVIN WALTON			

112892	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v ALVIN WALTON			

Affirmed.

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

KEY WORDS: *Petition for postconviction relief; motion for leave to file motion for new trial; Brady violation; unavoidably prevented; Crim.R. 33.*

Trial court did not abuse its discretion in denying defendant's untimely petition for postconviction relief where because the state did not suppress any evidence, the defendant did not establish that he was unavoidably prevented from discovering the evidence upon which he relied in his petition and that no reasonable factfinder would have found him guilty but for constitutional error at trial; trial court did not err in denying defendant's motion for leave to file a motion for new trial where the defendant did not prove by clear and convincing evidence that he was unavoidably prevented from discovering the evidence he relied upon to justify the motion for new trial.

CASE DECISION LIST

112139 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MAURICE REYNOLDS

Affirmed.

Mary Eileen Kilbane, P.J., Emanuella D. Groves, J., and Mary J. Boyle, J., concur.

KEY WORDS: *Sexual battery; gross sexual imposition; allied offenses of similar import; merger; R.C. 2941.25(A); Crim.R. 11.*

The trial court did not err in imposing separate sentences for sexual battery and gross sexual imposition offenses where the offenses were executed with distinct sexual acts and therefore were not allied offenses of similar import. The appellant's guilty plea was knowingly, intelligently, and voluntarily entered.

112163 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DELANO HALE

Affirmed in part, reversed in part, and remanded.

Eileen T. Gallagher, J., and Kathleen Ann Keough, P.J., concur; Sean C. Gallagher, J., dissents (with separate opinion).

KEY WORDS: *New trial; newly discovered evidence; merits; unavoidably prevented; Brady violation; suppressed; jury selection; abuse of discretion; hearing; futile; exhibit.*

The trial court abused its discretion by denying the defendant leave to file a motion for new trial where the newly discovered evidence demonstrates, on its face, that the defendant was unavoidably prevented from discovering the evidence within the time period prescribed by Crim.R. 33(B).

112215 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: D.M.

Reversed and remanded.

Michael John Ryan, J., Michelle J. Sheehan, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Personal jurisdiction; Civ.R. 52; plain error; guardian ad litem; Prof.Cond.R. 1.3; motion to withdraw.*

The trial court had personal jurisdiction over the mother when the mother and her counsel appeared at pretrial hearings, filed and responded to motions, and otherwise participated in the case. The

CASE DECISION LIST

(Case 112215 continued)

trial court committed plain error when it did not continue the hearing on the father's motions to modify custody; the court was aware that the mother was hospitalized and could not attend the hearing. Mother's counsel had filed a motion to withdraw but the court did not grant the motion until a week after the hearing and mother's attorney also failed to attend the hearing. The trial court also erred in issuing journal entries stating that it was the parties' burden to make sure their attorneys appeared and were prepared for hearings; it is not a litigant's responsibility to secure their attorney's appearance or readiness in court.

The court abused its discretion in relying on the guardian ad litem's report when the guardian ad litem did not appear for the hearing, when the GAL provided a copy of his report only to the father, and when there is nothing in the record to indicate that the mother or her counsel were made aware of the report.

112243 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v OSWALD PUBILL

Affirmed.

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

KEY WORDS: *Competency evaluation; Crim.R. 29; sufficiency of the evidence; inducing panic; resisting arrest.*

The trial court did not err by judging the appellant competent to stand trial after ordering two competency evaluations, where the appellant was deemed competent. The trial court did not err by refusing to order a third competency evaluation because the appellant's behavior did not demonstrate that he was incompetent to stand trial. The trial court did not err by denying the appellant's Crim.R. 29 motion for acquittal because the evidence was sufficient to convict him of inducing panic and resisting arrest.

112282 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MICHAEL HILTON

Affirmed.

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

KEY WORDS: *Res judicata.*

Judgment affirmed. Defendant's arguments are barred by res judicata. Hilton did not raise these arguments on direct appeal following his 2006 conviction and 2008 resentencing and any issue that could have been raised then cannot be drawn into question now.

CASE DECISION LIST

112314 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DA'SHAWN PETTIGREW

Affirmed.

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

KEY WORDS: *Felony sentencing; R.C. 2929.11; contrary to law; clear and convincing evidence; R.C. 2953.08(G)(2).*

Judgment affirmed. Appellant did not meet his burden in clearly and convincingly demonstrating that the trial court's sentence was contrary to law. The trial court indicated that it considered the purposes of felony sentencing pursuant to R.C. 2929.11 and the sentence was not outside of the statutory range for the offenses that appellant pled guilty to.

112357 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MALCOLM ALLMON

Affirmed and remanded.

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

KEY WORDS: *Reagan Tokes Law; indefinite sentences; maximum; minimum.*

The journalization of appellant's sentence was contrary to law where the court failed to impose the statutorily required minimum and maximum on each count.

112455 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KENNETH SMITH

Affirmed.

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

KEY WORDS: *Knowingly; intelligently; voluntarily; misinformation; prejudice; guilty; plea; plea agreement; term; no contact; invited error.*

Defendant cannot demonstrate that but for the trial court's alleged incorrect statement of law he would not have accepted the terms of a negotiated plea agreement and pleaded guilty to a single count of rape. Defendant did not object to the terms of his negotiated plea agreement and invited any alleged error associated with the imposition of a no-contact order.

CASE DECISION LIST

112512 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MALCOLM ALLMON

Affirmed.

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

KEY WORDS: *Reagan Tokes Law; indefinite sentences; constitutional challenges; due process; separation of powers; right to jury trial.*

Pursuant to State v. Hacker, Slip Opinion No. 2023-Ohio-2535, appellant's constitutional challenges to the indefinite sentencing provisions of the Reagan Tokes Law are overruled.

112535 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
THE HUNTINGTON NATIONAL BANK v MARIO D. BLUE

Affirmed.

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

KEY WORDS: *Foreclosure; summary judgment; motion to quash subpoena; untimely counterclaim; motion to compel discovery; standing.*

The trial court properly ignored appellant's counterclaim because it was untimely filed without leave of court.

Because appellant did not follow the appropriate procedure set forth in the civil rules for obtaining discovery, there were no grounds upon which the trial court could grant his motions to compel.

There was no requirement that the order of sale contain the clerk of courts seal as the appellant is required under federal law. This foreclosure action was brought in state court, not federal court, and, therefore, the federal statute did not apply to it.

The trial court properly granted the bank's motion to quash appellant's subpoena for the original note. A foreclosing bank is not required to present the original documents to the trial court; a trial court can rely on copies of a note and mortgage in ruling on a motion for summary judgment in a foreclosure case.

The appellant failed to come forward with affirmative evidence demonstrating that there was a genuine issue of material fact regarding the bank's foreclosure complaint. The trial court therefore properly granted the bank's motion for summary judgment.

The bank had standing to pursue this foreclosure action. It presented evidence that, as of the time it filed its complaint, it was both entitled to enforce the note and was the assignee of the mortgage.

CASE DECISION LIST

112539 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
COMPANY, INC., ET AL. v CAPSTONE CONSTRUCTION COMPANY, LLC, ET AL.

Affirmed in part; reversed in part; and remanded.

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

KEY WORDS: *Bench trial; manifest weight of the evidence; competent, credible evidence; contractor; available for judgment; dismissal; unjust-enrichment claim; subcontractor; double recovery; insolvency; bankruptcy; active participation in litigation; Civ.R. 60(B); relief from judgment; trial court divested of jurisdiction during pendency of appeal.*

The trial court erred in determining that Capstone was available for judgment and consequently dismissing VMI's unjust-enrichment claims against Progressive and New Wembley when evidence was presented demonstrating that Capstone was insolvent and that there was no possibility of double recovery for VMI. The trial court did not fail to provide Progressive an opportunity to object or respond to VMI's objections. Finally, the trial court did not err in denying Progressive's motion for relief from judgment because it lacked jurisdiction to adjudicate such a motion once an appeal was filed.

112548 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v DAVEION PERRY

Affirmed.

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

KEY WORDS: *Petition for postconviction relief; R.C. 2953.21(A); aggravated murder; guilty plea; waiver; res judicata; law of the case; ineffective assistance of counsel; coercion; failure to investigate; findings of fact; conclusions of law.*

The trial court acted within its discretion when it denied the defendant's petition for postconviction relief without holding a hearing. The defendant waived many of his arguments by pleading guilty. Several other arguments were barred by res judicata or the law-of-the-case doctrine because they had been or could have been raised and adjudicated in prior appeals. The defendant's remaining arguments, related to alleged ineffective assistance of counsel during plea negotiations, were not supported by sufficient operative facts establishing a substantive ground for relief. The defendant submitted unsworn statements, not affidavits, in support of his petition. Even considering those statements as evidence, we concluded that counsel's advice was offered in the reasonable exercise of professional judgment. The defendant's argument that his counsel failed to investigate an alibi defense was meritless

CASE DECISION LIST

(Case 112548 continued)

where he admitted there was no merit to the defense. The trial court had jurisdiction to enter findings of fact and conclusions of law to explain its earlier denial of the defendant's petition. Judgment affirmed.

112552 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v VICTOR HATCHER

Affirmed.

Frank Daniel Celebrezze, III, P.J., and Michael John Ryan, J., concur; Sean C. Gallagher, J., concurs in judgment only in part and concurs in part (with separate opinion).

KEY WORDS: *Felony sentencing; appellate review; R.C. 2953.08(G)(2); clearly and convincingly finds; sentence contrary to law; principles and purposes of sentencing; R.C. 2929.11; R.C. 2929.12; mitigating factors; genuine remorse; ineffective assistance of counsel; deficiency; prejudice; plea bargain; waiver; knowing, intelligent, and voluntary plea.*

Appellant failed to demonstrate that the trial court did not properly consider the sentencing factors or that his sentence was contrary to law. The record reflects that the court spent significant time going through R.C. 2929.11 and 2929.12, addressing all of the factors listed therein, and his six-month sentence was within the statutory range.

Appellant did not receive ineffective assistance of counsel. Appellant failed to cite any portion of the record showing where his counsel's performance fell below a reasonable standard and did not demonstrate that his plea was not knowingly, voluntarily, and intelligently made.

112613 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RICARDO VEGA, III

Vacated and remanded.

PER CURIAM.

KEY WORDS: *Fourth-degree felony; prison sentence; abuse of discretion; bias.*

Prison sentence on defendant's fourth-degree felony conviction vacated and case remanded for resentencing by another judge where trial court exhibited bias.

CASE DECISION LIST

112625 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob

J. W. v J. P.

Affirmed.

Emanuella D. Groves, J., Eileen T. Gallagher, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Protection order; abuse of discretion; menacing by stalking; sufficiency.*

There was sufficient evidence presented as to all elements of menacing by stalking such that the trial court did not abuse its discretion when it granted the petitioner's request.

112655 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate

IN RE: D.W.

Remanded.

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

KEY WORDS: *Probable cause; findings on the record.*

The juvenile court must place its findings and determinations regarding probable cause on the record in order to provide the appellate court with the opportunity to conduct a meaningful review of its decision.

112689 COMMON PLEAS COURT A Criminal C.P.

STATE OF OHIO v CARDELL HOUSTON

Affirmed.

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

KEY WORDS: *Crim.R. 33; motion for new trial; newly discovered evidence; clear and convincing proof; material evidence; hearing on motion.*

The trial court did not abuse its discretion in denying appellant's motion for leave to file a motion for a new trial. Appellant has not shown that he was unavoidably delayed in discovering the information in his motion and has not shown that the allegedly newly discovered information was material. Appellant's own unsworn, unsupported claims are not evidence and his attorneys' affidavits do not support his claims. The trial court also did not abuse its discretion in declining to hold a hearing on the motion

CASE DECISION LIST

(Case 112689 continued)

because appellant failed to submit any evidentiary material to support his claim. The alleged disciplinary file on a nontestifying detective, which does not mention appellant's case, was not relevant evidentiary material.

112718 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE M.W., ET AL.

Affirmed.

Mary J. Boyle, J., Kathleen Ann Keough, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Abuse of discretion; permanent custody; best interests of child determination; CCDCFS; R.C. 2151.353(A)(4); R.C. 2151.414; clear and convincing evidence; guardian ad litem; Sup.R. 48.03.

Judgment affirmed. There is clear and convincing evidence in the record to support the court's determination that permanent custody to CCDCFS is in the children's best interests. Accordingly, the court's decision to grant permanent custody is not against the evidence. Furthermore, the court did not abuse its discretion in determining that permanent custody of the children be awarded to CCDCFS. The record also demonstrates that while the GAL did not visit the maternal grandfather's home, the GAL still fulfilled her duties to the children.