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Court of Appeals, Eighth Appellate District

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September 7, 2023

112003 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RAY A. TALLEY

Affirmed.

Emanuella D. Groves, J., Michelle J. Sheehan, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Crim. R. 29; Sufficiency of evidence; burden of production; evidence of ownership; authorization to enter; breaking and entering; evidence of value; theft; degree of offense; misdemeanor theft conviction; vandalism; criminal tools; manifest weight; circumstantial evidence.*

Defendant appeals his convictions for vandalism, theft, breaking and entering, and possession of criminal tools. Trial court affirmed where the record contains sufficient evidence to support appellant's convictions for breaking and entering, vandalism, and theft and the convictions were not against the manifest weight of the evidence.

112064 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RALPH THOMAS

Affirmed in part; reversed in part; and remanded.

Eileen T. Gallagher, P.J., Mary J. Boyle, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Ineffective assistance of counsel; prejudice; deficient; objection; consecutive sentences; contrary to law; findings; allied offense; plain error; victim.*

The trial court did not commit an obvious error by merging Counts 1 and 2 of the indictment and imposing separate sentences on the remaining offenses. Defense counsel did not render ineffective assistance of counsel at trial by failing to raise continuing objections to the use of the phrase "the victim." Defense counsel did not render ineffective assistance of counsel at sentencing by failing to object to the trial court's decision to impose separate sentences on Counts 1, 3, and 4 of the indictment. The trial court failed to make each of the findings required to impose consecutive sentences.

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112095 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CONTESSA HOSKINS v CITY OF CLEVELAND, ET AL.

Affirmed.

Anita Laster Mays, A.J., Frank Daniel Celebrezze, III, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Summary judgment; genuine issues of material fact.*

The trial court properly denied the appellant's summary judgment motion because there are genuine issues of material fact for trial.

112098 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MARIO FREEMAN

Affirmed in part, reversed in part, and remanded.

Anita Laster Mays, A.J., Mary Eileen Kilbane, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Manifest weight of the evidence; self-defense jury instruction; ineffective assistance of counsel; sufficiency of the evidence; R.C. 2923.162(A)(3); discharge of firearm on or over public road; R.C. 2941.25; merger of allied offenses; R.C. 2903.11(A)(1) and 2903.11(A)(2); Reagan Tokes Law.*

The evidence was insufficient to support the claim that appellant discharged a firearm on or over a public road in violation of R.C. 2923.162(A)(3). Appellant is not entitled to a reversal of his convictions on the ground of manifest weight of the evidence though aspects of the testimony of the sole eyewitness who was also the victim were contradictory or inconsistent. Counsel was not ineffective for failing to request a self-defense instruction where not supported by the evidence. The trial court's refusal to merge felonious assault convictions under R.C. 2903.11(A)(1) and 2903.11(A)(2) did not constitute error. Gunshots separated by a brief interval but with separate animus may establish distinct offenses and preclude application of the merger doctrine.

112101 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: J.P.S.

Dismissed.

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

KEY WORDS: *Juvenile court; permanent custody; temporary custody; factors; visitation; agency; best interests of the child;*

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clear and convincing evidence; domestic violence, parental rights; twenty-two-month; recommendation; mental health; substance abuse; drug screen; consistency.

The juvenile court did not abuse its discretion in determining that an award of permanent custody was in the child's best interest and did not err when it awarded permanent custody to the agency pursuant to R.C. 2151.414. Counsel's withdrawal under Anders was appropriate because the appeal was wholly frivolous.

112146 PROBATE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE ESTATE OF MARTHA DEANE MCNEAL WEARN

Affirmed.

Kathleen Ann Keough, P.J., Eileen T. Gallagher, J., and Sean C. Gallagher, J., concur.

KEY WORDS: Estate; administration; App.R. 12; App.R. 16.

Probate court did not err in its oversight of the administrator's administration of the estate. Appellant did not avail himself to procedural processes or remedies that would have allowed him to review the probate court's alleged biases and administrator's purported mishandling of the estate. Appellant failed to comply with App.R. 12 and 16 by failing to support his arguments with legal authority and transcripts of the proceedings.

112188 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TRAMAINE E. MARTIN

Affirmed.

Eileen A. Gallagher, P.J., Lisa B. Forbes, J., and Emanuella D. Groves, J., concur.

KEY WORDS: Postconviction DNA testing; kidnapping; attempted rape; gross sexual imposition; definitive DNA test; R.C. 2953.74(A); identity of perpetrator; R.C. 2953.74(C)(3); abuse of discretion.

The defendant appealed the denial of an application for postconviction DNA testing of a minor victim's underwear. We affirmed the judgment because there had been a prior definitive DNA test performed on the underwear and because the identity of the perpetrator was not an issue at trial.

The minor victim claimed that the defendant attempted to rape her and also licked her "private part." The victim's underwear was tested for DNA prior to trial. Testing revealed the presence of amylase, which is found in human saliva but can also be found in other bodily fluids. DNA found in the amylase on the back panel of

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the underwear conclusively matched the defendant's DNA.

The defendant did not challenge that his DNA was on the underwear, but he asserted at trial that the DNA got there because his sweat was transferred from a shared toilet (as opposed to from saliva deposited during a criminal assault). He sought postconviction DNA testing not to exclude him as a contributor of DNA but rather to identify whether the amylase was deposited through saliva or sweat. Postconviction DNA testing is not available under these circumstances. Judgment affirmed.

112234 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MALACHI BELL

Affirmed.

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

KEY WORDS: Sentence; Reagan Tokes Law.

Appellant's claim that his indefinite sentence is unconstitutional is without merit pursuant to State v. Hacker, Slip Opinion No. 2023-Ohio-2535.

112311 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v EMMANUEL C. SALAKO

Affirmed.

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

KEY WORDS: Aggravated robbery; sufficiency of the evidence; manifest weight; incarceration; bribe; credibility; Reagan Tokes Law; Hacker.

Defendant's convictions, including aggravated robbery and felonious assault, upheld where sufficient evidence was presented that the defendant robbed the victim at gunpoint and then struck the victim in the face with the firearm. Victim's incarceration at trial and acceptance of defendant's bribe did not render his testimony per se incredible. Defendant's challenges to Reagan Tokes Law overruled in light of the Ohio Supreme Court's decision in Hacker.

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112428 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v T.C.N.

Reversed and remanded.

Emanuella D. Groves, J., Anita Laster Mays, A.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *R.C. 2953.32; sealing of records; abuse of discretion.*

Trial court abused its discretion when it denied an application to seal a conviction where the applicant's uncontroverted testimony established rehabilitation. Applicant's status as a police officer and the nature of the crime are not reasons for denying the application. Additionally, the applicant's filing of a motion to withdraw guilty plea after fully complying with and being terminated from community control was not evidence of failure to rehabilitate where neither the state nor the court asked any questions about the motion at the application hearing and therefore failed to explore the applicant's position at the time of the hearing.

112471 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ROBERT WARNER v OHIO DEPARTMENT OF JOBS AND FAMILY SERVICE, ET AL.

Affirmed.

Frank Daniel Celebrezze, III, P.J., Kathleen Ann Keough, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Ohio Department of Job and Family Services; Unemployment Compensation Review Commission; R.C. 4141.282; unemployment benefits; validity of application; R.C. 4141.29(A)(1); unemployed; R.C. 4141.01(R)(4); totally unemployed; remuneration.*

Judgment affirmed. The decision of both the Ohio Department of Job and Family Services ("ODJFS") and the Unemployment Compensation Review Commission ("UCRC") that Warner's application for unemployment benefits was invalid is supported by evidence in the record demonstrating that Warner did not fit the definition of "unemployed" at the time he applied for benefits. Accordingly, it was not unlawful, reasonable, or against the manifest weight of the evidence for the trial court to affirm the ODJFS and UCRC's decisions.

112496 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v SVYATOSLAV HRYTSYAK

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Reversed and remanded.

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

KEY WORDS: *OVI; limited driving privileges; R.C. 4510.021; ten-year lookback period; abuse of discretion; nunc pro tunc.*

Judgment reversed and remanded. The trial court erred in granting appellee's motion for limited driving privileges because R.C. 4510.021 expressly forbids granting limited driving privileges if the offender had been convicted of or pleaded guilty to three or more OVI offenses within the preceding ten years. The record indicates that appellee had been convicted of or pleaded guilty to at least four OVI offenses within the preceding ten years. Further, appellee's attempts to contest the validity of the sentence based on the court's nunc pro tunc entry are without merit.

112556	JUVENILE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
IN RE K.C.			

Affirmed.

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

KEY WORDS: *Termination of parental rights; permanent custody; adjudication; disposition; in camera interview; plain error; 90-day statutory timeframe for dispositional hearings; separate counsel for child; ineffective assistance of counsel; best interest of child; clear and convincing evidence.*

Termination of father's parental rights affirmed. The dispositional hearing commenced within R.C. 2151.35(B)(1)'s 90-day timeframe. The child did not repeatedly and consistently express a wish to live with father; therefore, the child's wishes did not conflict with the guardian ad litem's recommendation, and the appointment of separate counsel was not warranted. Father's counsel was not ineffective given that his assignments of error were overruled. The child could not be placed with Father within a reasonable time because he lived out of state and failed to comply with case-plan objectives to have his home approved for placement.