

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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November 21, 2024

113222 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v BRYAN BAILEY

Affirmed.

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

KEY WORDS: *Felony sentence, consecutive sentence; disproportionate; withdrawal of plea; R.C. 2929.14(C)(4); Crim.R. 11.*

Judgment affirmed. *A reviewing court may overturn the imposition of consecutive sentences where the court clearly and convincingly finds that the record does not support the sentencing court's findings under R.C. 2929.14(C)(4) or the sentence is otherwise contrary to law. Our review of the record indicates that the trial court engaged in the proper analysis, weighed the appropriate factors, and made the necessary findings pursuant to R.C. 2929.14(C)(4) before imposing consecutive sentences.*

A hearing on a postsentence motion to withdraw is only required if the facts alleged by the defendant, accepted as true, would require the defendant be allowed to withdraw the plea. Crim.R. 11 requires the trial court to ensure that a change of plea is made knowingly, intelligently, and voluntarily. When reviewing pleas, this court focuses on whether the dialogue between the trial court and the defendant demonstrates that the defendant understood the plea's consequences and has rejected the assertion that a trial court is required to include an advisement regarding consecutive sentences. Here, a review of the record demonstrates that the trial court complied with the relevant provisions of Crim.R. 11(C) and a manifest injustice did not occur.

113380 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: J.H., IV

Affirmed in part and dismissed in part.

Eileen A. Gallagher, J., Kathleen Ann Keough, A.J., and Anita Laster Mays, J., concur.

KEY WORDS: *App.R. 4(A)(1); App.R. 4(B)(2)(d); Civ.R. 52; timely filing; notice of appeal; lack of jurisdiction.*

Appellant guardian ad litem failed to timely file a motion to request findings of fact and conclusions of law and thereby his time to file his appeal was not tolled. *Appellant failed to file his appeal within thirty days so this court has no jurisdiction to hear his first assignment of error which must be dismissed. Similarly, for the second assignment of error the trial court did not abuse its discretion in denying appellant's untimely motion for findings of fact and conclusions of law.*

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113527 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
RICHMOND HEIGHTS OWNER LLC, ET AL. v
RICHMOND HEIGHTS COMMUNITY REINVESTMENT

Affirmed.

Lisa B. Forbes, P.J., Eileen T. Gallagher, J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Administrative appeals; municipal-tax exemptions; R.C. 2506.04.*

The administrative agency denied, and the trial court affirmed, a property owner's application for a tax exemption because, according to the municipal resolutions at issue, the property did not qualify for the exemption. Specifically, the renovations to the property were completed prior to the adoption of the resolution and the resolution required the renovations to start after the adoption of the resolution. We affirm this decision.

113551 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v LLOYD SPIVEY

113552 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v LLOYD SPIVEY

Vacated and Remanded.

Anita Laster Mays, J., Sean C. Gallagher, P.J., and William A. Klatt, J.,* concur.

(*Sitting by assignment: William A. Klatt, J., retired, of the Tenth District Court of Appeals.)

KEY WORDS: *Crim.R. 11(C)(2)(a) and (c); constitutional rights; guilty plea.*

The trial court erred when it did not advise the appellant of his constitutional rights under Crim.R. 11(C)(2)(a) and (c), therefore invalidating the appellant's guilty plea.

113577 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DAVID O'BOYLE

Affirmed.

Michelle J. Sheehan, J., and Eileen A. Gallagher, P.J., concur; Frank Daniel Celebrezze, III, J., concurs (with separate opinion).

KEY WORDS: *Rape; ineffective assistance of counsel; presentation of alibi defense; failure to proffer evidence; manifest weight of the*

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evidence.

Defendant appealed his conviction for rape after trial to the bench. Defendant did not demonstrate he received ineffective assistance of counsel where the record indicates the decision to not present an alibi defense was a tactical one and he did not show the outcome at trial would have been different had the alibi defense been presented. Defendant's complaint that counsel was ineffective for failing to proffer evidence cannot be evaluated where this court would have to speculate as to the content of the evidence. The conviction for rape was not against the weight of the evidence where the victim was able to describe the crime that occurred and explain her actions in naming a different man as the perpetrator of the rape. Court could not find victim's testimony was incredible or trier of fact lost its way in finding defendant guilty.

113641	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JAMONE THOMAS			

Affirmed.

Emanuella D. Groves, P.J., Sean C. Gallagher, J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *R.C. 2929.11; R.C. 2929.12; sentencing; factual findings.*

Judgment affirmed. *A sentence is contrary to law if (1) the sentence falls outside the statutory range for the particular degree of offense, or (2) the trial court failed to consider the purposes and principles of sentencing set forth in R.C. 2929.11, and the sentencing factors set forth in R.C. 2929.12. When sentencing for a felony, the trial court "shall be guided by the overriding purposes of felony sentencing." Seriousness and recidivism factors should be considered by the trial court should consider when imposing a felony sentence. However, trial court is not required to make any specific factual finding on the record regarding its consideration of these factors, even when imposing a more-than-minimum sentence. Upon review, this court finds that the trial court considered the necessary factors and the defendant's sentence is not contrary to law.*

113646	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
S.L. v M.E.H.			

Reversed and remanded.

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

KEY WORDS: *Civil stalking protection order; Civ.R. 60(B); motion for relief from judgment; burden; excusable neglect; meritorious*

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defense; operative facts; abuse of discretion; discretionary authority.

Reversed the trial court's decision to deny appellant's motion for relief from judgment of a civil stalking protection order and remanded the matter for an evidentiary hearing. Relief from judgment under Civ.R. 60(B) was warranted when the motion was filed two days after the judgment and the appellant demonstrated excusable neglect and provided operative facts that, if proven, would support a meritorious defense in the matter.

113726 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v D'ANGELO PENNINGTON, JR.

Affirmed.

Kathleen Ann Keough, A.J., Eileen A. Gallagher, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Crim.R. 11(C)(2)(a) maximum penalty; Reagan Tokes; indefinite sentence; maximum sentence; prejudice.*

Conviction upheld where defendant entered into a plea agreement that included an indefinite sentence. Although the trial court did not fully comply with Crim.R. 11(C)(2)(a)'s requirement that it inform defendant of the maximum penalty that could be imposed on the indefinite sentence, it explained how the indefinite sentence would be calculated. Defendant did not argue nor demonstrate prejudice where he understood the agreed prison sentence would include an indefinite sentence.

113756 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOHN A. CORBO

Dismissed.

Michelle J. Sheehan, P.J., Emanuella D. Groves, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Anders procedure; frivolous appeal.*

After being indicted for two counts of rape, one count of kidnapping, and one count of gross sexual imposition, defendant entered into a plea agreement pleading guilty to one count of sexual battery. Appellate counsel filed a motion to withdraw pursuant to Anders v. California, 386 U.S. 738 (1967). Anders outlines the procedure counsel must follow to withdraw where counsel can find no meritorious grounds for appeal. Appellate counsel must examine the record and advise the court of their findings, or lack thereof, and furnish a copy of his brief to defendant to allow sufficient time to file a brief pro se. Once appellate counsel filed a motion to withdraw, the appellate court must examine the

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proceedings to determine if any meritorious claims exist. An issue lacks arguable merit if no responsible contention can be made that it offers a basis for reversal. If no meritorious grounds for appeal are found to exist, the court may determine an appeal would be frivolous. A frivolous appeal is one that asserts issues lacking in arguable merit.

Within the motion to withdraw, appellate counsel stated he reviewed the record and found that the plea was done in accordance with law, that the sentence was not contrary to law, and that Corbo received effective assistance of counsel at the time of the plea. Following our independent review of the entire record, we find that no meritorious arguments exist and that an appeal would be wholly frivolous. As a result, appellate counsel's request to withdraw is granted and the appeal is dismissed.

113846 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE A.H.

Affirmed.

Michelle J. Sheehan, P.J., Mary J. Boyle, J., and Michael John Ryan, J., concur.

KEY WORDS: *Permanent custody; R.C. 2151.353(A)(4); legal custody; disposition; manifest weight of the evidence; R.C. 2151.414(E); best interests; chronic mental illness.*

The juvenile court's judgment denying Cuyahoga County Department of Children and Family Services' motion for permanent custody and granting father legal custody with protective supervision to the agency was not against the manifest weight of the evidence.

114010 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
STATE OF OHIO v TRAMAINE E. MARTIN

Affirmed.

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

KEY WORDS: *Postconviction; petition; res judicata; sentence; void; voidable; untimely; unavoidably prevented; jurisdiction.*

The trial court did not err in denying the defendant's postconviction motion. The motion was untimely and barred by res judicata.

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114069 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: I.E., ET AL.

Affirmed.

Lisa B. Forbes, P.J., Sean C. Gallagher, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Termination of parental rights; best interest of the child; R.C. 2151.414(B); R.C. 2151.414(D); R.C. 2151.414(D); manifest weight; clear and convincing.*

Based on substantial evidence, the juvenile court did not err when terminating the parental rights of mother and father and granting custody of the children to the agency Cuyahoga County Division of Children and Family Services. Both mother and father failed to comply with their case plans. The guardian ad litem, the court appointed special advocate, and the agency case worker all found it was in the best interest of the children to be in the custody of the agency.

114101 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
ROSEL HURLEY v BETFAIR INTERACTIVE

Affirmed.

Michelle J. Sheehan, P.J., Mary J. Boyle, J., and Michael John Ryan, J., concur.

KEY WORDS: *Motion to compel arbitration; unconscionability; abuse of discretion; App.R. 16(A)(7).*

Plaintiff alleged causes of action regarding a contract with defendant. Defendant moved to compel arbitration based on arbitration clause in contract. The trial court did not abuse its discretion by ordering arbitration. Plaintiff did not show why the arbitration agreement in the contract was unconscionable nor did he cite authority or argue such on appeal in contravention of App.R. 16(A)(7).

114240 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: J.H.

Vacated.

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

KEY WORDS: *Conceded error; Loc.App.R. 16(B); parental rights; Civ.R. 41(A); self-executing; notice of dismissal; jurisdiction.*

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(Case 114240 continued)

Judgment vacated. Civ.R. 41(A) applies to parental rights cases because the juvenile rules are silent regarding voluntary dismissal of complaints. Since the agency filed a notice of dismissal of the complaint, which was self-executing, the trial court was divested of jurisdiction on the date of filing.