

CASE DECISION LIST

October 3, 2024

113137 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CITY OF CLEVELAND v STATE EMPLOYMENT RELATIONS BOARD, ET AL.

Affirmed.

Anita Laster Mays, J., and Emanuella D. Groves, J., concur; Lisa B. Forbes, P.J., concurs in judgment only.

KEY WORDS: *R.C. Ch. 4117, public employees' collective bargaining, R.C. 4117.11, unfair labor practices, R.C. 4117.08, subjects appropriate for collective bargaining.*

The trial court's judgment affirming the finding of the State Employment Relations Board that the union did not waive its right to bargain under the express terms of the collective bargaining agreement or by the union's actions is affirmed.

113353 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
HANY ANTON, M.D. v RONALD FLAUTO, D.O.

Reversed.

Emanuella D. Groves, J., and Michael John Ryan, J., concur; Lisa B. Forbes, P.J., concurs in judgment only.

KEY WORDS: *R.C. 2317.02(A); attorney-client privilege; waiver.*

Trial court erred in granting motion to compel discovery of attorney-client privilege where there was insufficient evidence in the record to establish that the client had waived privilege pursuant to R.C. 2317.02(A).

113445 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MATTHEW PONOMARENKO

Affirmed.

Lisa B. Forbes, J., Michelle J. Sheehan, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Aggravated murder; guilty plea; Crim.R. 11; postrelease control; maximum penalty.*

The defendant's guilty plea was made knowingly, intelligently, and voluntarily. The court did not explain, prior to accepting the guilty plea, that postrelease control was part of the maximum penalty for

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the counts at issue other than aggravated murder. However, the defendant failed to show prejudice because his sentence for aggravated murder was life in prison with eligibility for parole after serving 45-49 years and postrelease control will not apply should he ever be released from prison and placed on parole.

113459 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ROBERT SLUSARCZYK, JR.

Affirmed.

Mary J. Boyle, P.J., Michael John Ryan, J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: Gross sexual imposition (“GSI”); R.C. 2907.05(A)(4); prearrest actions; plain error; Evid.R. 404(B); other acts; abuse of discretion; sexual gratification or arousal; trial tax; vindictive sentence; sufficient evidence; manifest weight of the evidence; ineffective assistance of counsel.

Judgment affirmed. It was not plain error to allow the video evidence of defendant entering the police station, beginning to fill out a statement form and then crumpling up the form and leaving because the defendant cannot demonstrate that this evidence affected the outcome of trial. This is because the State did not stress any inference of guilt from defendant’s silence and there was sufficient evidence to sustain his conviction. The evidence of other acts by defendant was admissible under Evid.R. 404(B) because it showed that defendant’s touching of victim’s breast was not a mistake and the probative value of the evidence was not outweighed by the danger of unfair prejudice. The record does not reveal any evidence indicating that the trial court acted in a vindictive manner when imposing defendant’s 36-month sentence concurrent to his sentence for his parole violation. The State was not required to present direct evidence proving the element of sexual arousal or gratification in order to sustain defendant’s GSI conviction. Rather, the jury may infer that a defendant was motivated by a desire for sexual arousal or gratification from the totality of the circumstances. Additionally, defendant’s GSI conviction was not against the manifest weight of the evidence because the jury rejected his version of the facts and believed the State’s testimony. Lastly, defense counsel was not ineffective for not subpoenaing witness and records because the defendant failed to demonstrate that defense counsel’s trial tactics were deficient and the deficient performance deprived him of a fair trial.

113473 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
GLORIA A. WALAS v CRAIG LEONE, ET AL.

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Affirmed.

Eileen T. Gallagher, J., Eileen A. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Pleading; motion; strike; amend; counterclaim; leave; dismiss; Civ.R. 12(B)(6); conclusory; ordinance; relief; failure to state a claim; private nuisance.*

The trial court did not err by granting plaintiff's motion to strike the defendant's counterclaim. The trial court did not err in granting defendant's motion to dismiss for failure to state a claim upon which relief can be granted.

113490 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v SCOTT LAWRENCE

Affirmed.

Anita Laster Mays, J., and Eileen T. Gallagher, J., concur; Kathleen Ann Keough, A.J., concurs in judgment only in part and dissents in part (with separate opinion).

KEY WORDS: *Plain error; jury instructions; sufficiency of the evidence; manifest weight of the evidence; ineffective assistance of counsel; sentencing advisement.*

The trial court did not commit plain error when it did not sua sponte provide jury instructions when the evidence did not support the instructions. The evidence was sufficient to convict the appellant on all counts. The evidence was not against the manifest weight to convict the appellant on all counts. The appellant was provided with effective assistance of counsel. The trial court correctly provided the indefinite sentencing advisement.

113491 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: A.D.

Affirmed.

Anita Laster Mays, J., and Frank Daniel Celebrezze, III, J., concur; Michelle J. Sheehan, P.J., concurs in judgment only.

KEY WORDS: *R.C. 3109.12, subject-matter jurisdiction, grandparent visitation; R.C. 3109.04(F)(1), best interest factors, parental rights, shared parenting, and modification of custody motions; R.C. 3109.051(D), best interest factors, visitation and parenting time modifications; R.C. 2151.23(A)(1), neglect, abuse, and dependency action; R.C. 2151.353(F)(1), continuing jurisdiction; Civ.R. 24, motion to intervene; Civ.R. 5(B), service.*

The trial court had subject-matter jurisdiction to hear grandmother's application for visitation under R.C. 3109.12, appropriately applied

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the best interest factors under R.C. 3109.051(D) and 3109.04(F)(1) under the facts of this case, and its decision to grant visitation to the grandparent was not against the manifest weight of the evidence. Appellant's challenges to father's application for shared parenting and grandmother's motion to intervene are moot.

113617 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOSEPH HICKLE

Affirmed.

Sean C. Gallagher, J., and Mary J. Boyle, J., concur; Lisa B. Forbes, P.J., concurs in judgment only.

KEY WORDS: Drug possession; firearm specification; sufficiency; constructive possession; admission of evidence; Confrontation Clause.

Affirmed. Defendant's conviction for drug possession and the attendant firearm specification was based on sufficient evidence because the defendant conceded the conviction for possession of drugs in a bag that also contained a firearm, and therefore, he cannot credibly disclaim possession of the firearm. Further, the State's reliance on a federal report certifying that the defendant originally purchased the firearm did not violate the Confrontation Clause.

113622 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOHN HENDERSON

Dismissed.

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

KEY WORDS: Crim.R. 12.2; final, appealable order; self-defense; privilege; R.C. 2505.02; provisional remedy; interlocutory order.

Appeal dismissed. Defendant-appellant Henderson did not demonstrate that an interlocutory order compelling his compliance with Crim.R. 12.2 was a final, appealable order.

113640 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
FRANCISCAN COMMUNITIES, INC., ET AL. v JASON RICE, ET AL.

Affirmed.

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

KEY WORDS: *Setoff; legal; equitable; breach of contract; counterclaim; unjust enrichment; abuse of discretion; reversible error; traditional; same right; mutuality; offset; waived; equitable setoff; between judgments; discretionary power.*

Affirmed the trial court’s decision to deny appellants’ motion for setoff in which appellants sought to have a judgment rendered in favor of defendant-appellee on a counterclaim for unjust enrichment treated as a setoff against a damages award rendered in favor of appellants on a breach-of-contract claim, which related to two separate contracts entered with another defendant. No abuse of discretion or reversible error occurred. Appellants failed to timely seek, and were not entitled to, a setoff in the traditional sense; failed to establish the requested setoff related to cross demands in the same right, and when there is mutuality of obligation; and waived the issue of offset. Additionally, the trial court cannot be said to have committed reversible error by declining to exercise its discretionary power relating to equitable setoff between judgments.

113644	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v PHILLIP C. LITTLEJOHN			

Affirmed in part, vacated in part, and remanded.

Michelle J. Sheehan, J., Eileen A. Gallagher, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Statutory and constitutional right to speedy trial; guilty plea; consecutive sentences; sentencing error in merged count.*

Appellant’s guilty plea waived his right to challenge his conviction on statutory speedy-trial grounds. Regarding his constitutional speedy-trial right, he fails to demonstrate prejudice required in a Barker analysis. The trial court’s consecutive findings are supported by the record. The trial court, however, improperly imposed a term on a merged count, and therefore, matter remanded for the trial court to issue a corrected judgment reflecting the vacation of the sentence on the merged count.

113668	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v NELSON WESLEY			

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: *Postrelease control; time served; R.C. 2967.28; advisements.*

Reversed in part and remanded. Although the trial court

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inadvertently omitted an advisement on the consequences of violating the mandatory term of postrelease control and the defendant was deemed to have served the entirety of his sentencing through pretrial confinement, the trial court was nonetheless required to impose a term of postrelease control. The case is remanded for the purposes of providing the required notification.

113682 PARMA MUNI. G Civil Muni. & City
CREDIT ACCEPTANCE CORPORATION v GLORIA BEARD, ET AL.

Dismissed.

Frank Daniel Celebrezze, III, J., Eileen A. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Motion to stay and compel arbitration; final, appealable order; appellate jurisdiction; Ohio Const., art. IV, § 3(B)(2); R.C. 2505.02; Federal Arbitration Act; 9 U.S.C. 3; 9 U.S.C. 16; R.C. 2711.02; order compelling arbitration under FAA is not final, appealable order; interlocutory order.

Because the interlocutory order granting the stay was not a final, appealable order, this court lacks jurisdiction to review the merits of this appeal. Appeal dismissed.

113711 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOSHUA GAY

Affirmed.

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

KEY WORDS: Maximum prison sentence; appellate review of felony sentences; R.C. 2953.08(G)(2); clearly and convincingly; sentence contrary to law; record does not support specified findings; statutory range; R.C. 2929.11; R.C. 2929.12; seriousness and recidivism factors; trial court not required to discuss statutory factors.

Appellant has not affirmatively demonstrated that the trial court failed to consider the statutory factors. Thus, the trial court did not err in imposing the maximum prison sentence.