

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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January 9, 2025

113621 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JEROME RIVERS II

Affirmed.

Anita Laster Mays, J., Kathleen Ann Keough, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Right to self-representation; ineffective assistance of counsel; plain error; manifest weight of the evidence.*

Appellant's convictions were not against the manifest weight of the evidence. The record reflects appellant waived his right to self-representation. Counsel was not ineffective for failing to object to police testimony that appellant contends was prejudicial because appellant failed to demonstrate plain error.

113715 PROBATE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
CHARLES ALEXANDER v GEWAUNN ALEXANDER

Affirmed.

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

KEY WORDS: *Civ.R. 3(A); R.C. 2107.73; motion to dismiss; jurisdiction.*

The trial court properly granted the appellee's motion to dismiss because the appellant failed to perfect service as required by Civ.R. 3(A). The trial court properly granted the appellee's motion to dismiss because the appellant failed to join necessary parties, pursuant to R.C. 2107.73, to the case within the time required by Civ.R. 3(A). The trial court properly granted the appellee's motion to dismiss because it lacked jurisdiction over the appellee.

113733 BEDFORD MUNI. C Criminal Muni. & City
CITY OF BEDFORD HEIGHTS v ALPHONSO S. BRISBANE

Affirmed.

Eileen A. Gallagher, A.J., Sean C. Gallagher, J., and William A. Klatt, J.,* concur.

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

KEY WORDS: *Doctrine of res judicata; abuse of discretion; motion to suppress; lack of probable cause; illegal stop;*

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(Case 113733 continued)

community-control-sanction-violation hearing; probation officer testimony; due process violation.

Defendant-appellant's first assignment of error is barred by the doctrine of res judicata because the appeal had to be brought within thirty days of the trial court's denial of his motion to suppress, which he did not do. Defendant-appellant did not object to and the trial court did not err or abuse its discretion by hearing evidence from the probation officer during the community-control-sanction-violation hearing.

Similarly, defendant-appellant's failure to object to anything in the community-control-sanction-violation hearing waived all but plain error on review. Upon review we find defendant-appellant's due process rights were not violated and no plain error occurred during his probation violation hearing. The defendant-appellant's remaining assignments of error were properly overruled.

113760 BEREAMUNI. C Criminal Muni. & City
CITY OF BROOK PARK v JARED C. BELLA

Affirmed.

Mary J. Boyle, J., Kathleen Ann Keough, P.J., concurs; Anita Laster Mays, J., dissents (with separate opinion).

KEY WORDS: Menacing by stalking; R.C. 2903.211(A)(1); pattern; mental distress; sufficiency; manifest weight; Crim.R. 3; complaint.

Judgment affirmed. There was sufficient evidence of a pattern of conduct and that appellant caused the victim mental distress. Appellant's conviction for menacing by stalking was not against the manifest weight. The complaint was sufficient to notify the appellant of the charges against him.

113796 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ROMEL CUNNINGHAM

Affirmed.

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

KEY WORDS: Remote witness testimony; Sixth Amendment confrontation clause; harmless error; having a weapon while under disability; sufficiency of the evidence; manifest weight of the evidence.

Defendant's conviction for having weapons while under disability is affirmed. Two judges would reverse the conviction for being

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(Case 113796 continued)

unsupported by the manifest weight of the evidence, but because one judge dissented, and there is not unanimous agreement to reverse on a manifest weight theory, the conviction must be affirmed.

113802 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v LITRELL CHAPMAN

Affirmed.

Michelle J. Sheehan, P.J., Lisa B. Forbes, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Motion for leave to file motion for new trial; res judicata.*

In 1997, defendant was convicted of aggravated murder, aggravated burglary, and aggravated robbery. His convictions were affirmed on direct appeal. In 2001 and 2006, defendant filed motions for new trial alleging witnesses recanted or changed their testimony. Those motions were denied, and appeals of those motions were dismissed. In 2018, defendant filed several motions seeking a determination that the State withheld evidence. The trial court denied those motions, and defendant failed to appeal those motions. In 2024, defendant filed a motion for leave to file a motion for new trial arguing the State withheld evidence and trial witnesses recanted or changed their testimony. The trial court denied the motion for leave.

Because the doctrine of res judicata bars all subsequent new trial motions that are based on claims that were brought or could have been brought on direct appeal or in prior motions filed under Crim.R. 33, the court affirmed the trial court's denial of the motion for leave.

113866 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v H.M.

Reversed and remanded.

Kathleen Ann Keough, P.J., Michelle J. Sheehan, J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Motion to seal; expungement; restitution; final discharge; cognovit note; client security fund; hearing.*

Trial court's decision granting applicant's motion to seal reversed where the record does not reveal whether the applicant fully satisfied his restitution obligation. Case remanded for a hearing to determine whether the applicant achieved final discharge to qualify as an eligible offender.

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113943 GARFIELD HTS. MUNI. C Criminal Muni. & City
CITY OF GARFIELD HEIGHTS v ALPHONSO S. BRISBANE

Affirmed.

Michelle J. Sheehan, J., Kathleen Ann Keough, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Administrative law suspension appeal; R.C. 4511.197(a); timeliness of appeal; pro se motions; discretion of court to manage its docket; ineffective assistance of counsel; no contest plea; double jeopardy.*

Defendant appealed his conviction for operating a motor vehicle while intoxicated after entering a no contest plea. Defendant was arraigned in January 2023. Defendant's counsel filed several motions, including an appeal of his administrative license suspension. Defendant also filed several pretrial motions. The trial court scheduled regular pretrial hearings, but defendant, his counsel, or both failed to appear at numerous pretrials throughout the pendency of the case. Further, defendant was sentenced to a six-month probation violation in another case. After his release, the court scheduled the case for trial and defendant's counsel sought two continuances. On the day before trial, defendant entered a no contest plea.

On appeal, defendant argued the trial court erred by failing to hold a hearing on his administrative license appeal. However, the appeal was untimely filed and the trial court did not have jurisdiction over the appeal. Defendant argued that the trial court erred by not deciding his pro se motions, but a trial court may not entertain a pro se criminal defendant's motion when that defendant was represented by counsel. Defendant argued that the trial court abused its discretion in the scheduling of the case while he was serving his probation violation sentence. However, the trial court has discretion to manage its docket and did not abuse that discretion by continuing to schedule the case for pretrials and trial in light of defendant's and his counsel's absences. Defendant alleged his counsel was ineffective for failing to appear, failing to file motions at his request, and for seeking continuances. Defendant did not show that he would have otherwise not entered his no contest plea despite the alleged deficiencies by trial counsel. Finally, Brisbane's conviction in this case did not violate the prohibition against double jeopardy where his probation in another case was violated after he was charged in this case.

113974 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
US BANK TRUST NATIONAL ASSOCIATION v CARLTON ROBERTS

Affirmed.

Eileen A. Gallagher, A.J., Sean C. Gallagher, J., and William A. Klatt, J.,* concur.

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

KEY WORDS: *Summary judgment; foreclosure; notice.*

Summary judgment in favor of the bank is affirmed in this foreclosure case. The plaintiff, who was a subsequent buyer of the property at issue, argued that the bank was required to send the notice of pending foreclosure to him in addition to the former property owner, who signed the mortgage. However, in this case, the plaintiff did not sign the mortgage, was not a borrower under the terms of the documents, and was not a successor interest to the former owner. Therefore, the bank was not required to send him notice.