

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 6

April 4, 2019

101456	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v DENNY OBERMILLER			

Affirmed.

Patricia Ann Blackmon, P.J., Anita Laster Mays, J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *R.C. 2953.21; res judicata.*

Trial court did not abuse its discretion in denying petition to vacate conviction for aggravated murder and other offenses where the claims in support of the petition raised issues that were previously raised or could have been raised in petitioner's direct appeal to the Ohio Supreme Court or were otherwise without merit.

106582	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DORIAN BROWN			

Affirmed.

Kathleen Ann Keough, J., Eileen A. Gallagher, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Trafficking in persons; R.C. 2905.32(A)(1); multiple acts; Crim.R. 31(A); multiple distinct conceptual groups; plain error; sex offender classification; R.C. 2950.01(F)(1)(g); sufficiency of the evidence; manifest weight of the evidence; Evid.R. 404(B); discovery violation.*

R.C. 2905.32(A)(1) involves multiple acts because the offense involves multiple distinct conceptual groupings; thus, to ensure juror unanimity under Crim.R. 31(A), the state should have elected or the jury should have been instructed which act the defendant committed. However, no objection was raised, and this court exercised its discretion to not recognize plain error. No manifest injustice was found where the defendant was labeled a Tier II sex offender because the evidence at trial demonstrated that defendant's conduct under R.C. 2905.32(A)(1) was sexual in nature and not just for involuntary servitude purposes. Defendant's conviction for trafficking in persons is supported by sufficient evidence and not against the manifest weight of the evidence where the record demonstrates that the defendant enticed, maintained, and provided for the prostitute-victim and her son. Despite the state committing a discovery violation by failing to timely disclose a witness, the trial court did not abuse its discretion in failing to order a mistrial or strike the witness's testimony. The trial court abused its discretion in allowing other acts evidence, but the error was harmless when viewing the context of the entire trial.

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 2 of 6

106665 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
RICHARD BINDER, ET AL. v CUYAHOGA COUNTY

106666 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
GERALD BUTTERFIELD, ET AL. v CUYAHOGA COUNTY

Affirmed and modified.

Carol Ann Robb, J., Gene Donofrio, J., and Cheryl L. Waite, J., concur.*

(*Sitting by assignment: Judges of the Seventh District Court of Appeals)

KEY WORDS: *Failure to exhaust administrative remedies does not deprive trial court of subject matter jurisdiction or indicate claimant lacks standing because it is an affirmative defense; Trial court did not abuse its discretion in certifying a class pursuant to Civ.R. 23(b)(2) and (3).*

106779 STATE EMPLOYMENT REL. BD. E CIVIL C.P.-NOT JUV,DOM OR PRO
STEVEN STAKICH v NANCY MARGARET RUSSO, ET AL.

Reversed.

Gene Donofrio, J., Cheryl L. Waite, J., and Carol Ann Robb, J., concur.*

(*Sitting by assignment: Judges of the Seventh District Court of Appeals)

KEY WORDS: *Immunity; employee; police; summary judgment; malicious; bad faith; reckless conduct; wanton misconduct.*

106989 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
JUANITA FOWLER LIFE CARE CENTERS OF AMERICA, INC. v
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

Reversed and remanded.

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

KEY WORDS: *Medicaid authorized representative; R.C. 119.12, R.C. 5101.35; Ohio Adm.Code 5160:1-2--08(C); 42 C.F.R. 435.923; jurisdiction; standing.*

Common pleas court erred in dismissing appeal of administrative appeal decision, appealing denial of Medicaid benefits, for lack of jurisdiction. Nursing care facility, which had been designated as resident's Medicaid authorized representative, had standing to file an appeal on behalf of the resident in the common pleas court to challenge the denial of her Medicaid benefits.

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 3 of 6

107020	COMMON PLEAS COURT	A	CRIMINAL C.P.
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STATE OF OHIO v JOSEPH M. COLLINS, JR.

Affirmed.

Patricia Ann Blackmon, P.J., Anita Laster Mays, J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Evid.R. 404(B); prior criminal history; harmless error; ineffective assistance of counsel; manifest weight of the evidence.*

Defendant's convictions for attempted murder and associated offenses affirmed as being supported by the weight of the evidence in the record. Isolated references to defendant's prior criminal history were harmless as they were inadvertent and not introduced to show that defendant acted in conformity with his character. Counsel was not ineffective for failing to request a curative jury instruction as there was no reasonable possibility that the isolated testimony contributed to defendant's convictions.

107097	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
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STATE OF OHIO v E. C.

Reversed and remanded.

Frank D. Celebrezze, Jr., J.; Mary J. Boyle, P.J., concurs with separate opinion; Larry A. Jones, Sr., J., concurs with majority and concurs with separate concurring opinion.

KEY WORDS: *Sealing records of conviction; expungement; R.C. 2953.32; eligible offender; offense of violence; R.C. 2901.01; R.C. 2911.02.*

The trial court erred in granting appellee's application to seal the records of his criminal conviction. Appellee was convicted of robbery, an offense of violence, and thus was not eligible for expungement.

107102	CLEVELAND MUNI.	C	CRIMINAL MUNI. & CITY
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CITY OF CLEVELAND v SCOTT R. TURNER

Affirmed.

Michelle J. Sheehan, J., and Anita Laster Mays, P.J., concur; Eileen A. Gallagher, J., dissents (with separate opinion attached).

KEY WORDS: *Bestiality; R.C. 959.21(B); extrajudicial statement; corpus delicti; sufficient evidence; manifest weight of the evidence; community control conditions; home inspections.*

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 4 of 6

(Case 107102 continued)

The state satisfied the minimal burden of providing some evidence tending to prove that the crime of bestiality was committed and, thus, the court's admission of the appellant's extrajudicial statement was proper. The state provided sufficient circumstantial evidence demonstrating the appellant engaged in sexual conduct with a dog where the appellant discussed sexual acts with a dog; he identified the breed, age, and gender of the dog about which the dog's owner testified; the dog's owner testified concerning the dog's uncharacteristically strange behavior exhibited immediately after staying with the appellant, in the appellant's bed, including excessively licking her genitals and her discomfort during veterinarian exams. The conviction is not against the manifest weight of the evidence. The appellant's explanation that his statements concerning the sexual act with the dog were designed to distract his boyfriend from desiring sex with children was not credible. The trial court did not abuse its discretion by imposing conditions of community control, including allowing random home inspections by the APL.

107216	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v D'WAN J. BAILEY			

Affirmed.

Kathleen Ann Keough, J., Mary J. Boyle, P.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *Crim.R. 11; effective assistance of counsel; sentence.*

The record demonstrates that the trial court thoroughly complied with Crim.R. 11 and the defendant's plea was knowingly, intelligently, and voluntarily made. Any challenge to the plea on the basis that counsel was ineffective was not supported by the record. The defendant's sentence was not contrary to law and the relevant statutory findings were considered and stated on the record where appropriate.

107254	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ANTONIO T. BRADLEY			

107873	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ANTONIO BRADLEY			

Affirmed.

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

KEY WORDS: *R.C. 2953.08; felony sentences; R.C. 2929.14; consecutive sentences; Crim.R. 32.1; motion to withdraw plea; ineffective assistance of counsel.*

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 5 of 6

(Case 107873 continued)

The record demonstrates that appellant's plea was knowingly, intelligently, and voluntarily made and that defense counsel's performance was not deficient. Appellant was advised by the trial court of the applicable sentencing ranges, the impact of the plea agreement to waive merger of the charges, and the possibility of consecutive sentence imposition. The consecutive sentence findings were properly journalized.

107282	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DEONTE KING			

Affirmed.

Frank D. Celebrezze, Jr., P.J., Michelle J. Sheehan, J., and Raymond C. Headen, J., concur.

KEY WORDS: Ineffective assistance of counsel; mandatory fine; R.C. 2929.18; indigency; inability to pay.

Defense counsel's failure to file an affidavit of indigency did not constitute ineffective assistance of counsel because a reasonable probability does not exist that had counsel filed an affidavit of indigency, the trial court would have waived the mandatory fine.

107313	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v RA'SHAWN WILSON			

Affirmed.

Mary J. Boyle, P.J., Patricia Ann Blackmon, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: Consecutive sentences; R.C. 2929.14(C)(4).

The trial court's imposition of consecutive sentences was upheld because the trial court made the proper findings under R.C. 2929.14(C)(4) before imposing the sentence.

107414	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v MICHAEL KNOX			

Affirmed and remanded.

Kathleen Ann Keough, J., Patricia Ann Blackmon, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: Preindictment delay; actual prejudice; motion to

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 6 of 6

(Case 107414 continued)

sever; joinder; simple and direct; manifest weight of the evidence; Confrontation Clause.

Trial court did not err in denying defendant's motion to dismiss for preindictment delay where the defendant failed to demonstrate any actual prejudice by the delay, and the state produced evidence of a justifiable reason for the delay; trial court did not err in denying defendant's motion to sever for prejudicial joinder where the evidence regarding the offenses against each victim was simple and direct, and the state presented the evidence regarding the offenses against each victim separately and without overlap of proof; defendant's convictions were not against the manifest weight of the evidence; deceased victim's statements to the police were not testimonial in violation of the Confrontation Clause where the statements were made to assist the police with an ongoing emergency, and thus were properly admitted under the excited utterance exception to the hearsay rule.

107529	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v TERRANCE KIMBRO, SR.			

Dismissed.

Sean C. Gallagher, P.J., Frank D. Celebrezze, Jr., J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Dismissed; sentencing appeal; mootness doctrine.*

Defendant's appeal advanced a single assignment of error challenging the length of the imposed term of imprisonment, which was served prior to the conclusion of the appeal. The sole assignment of error is mooted by the defendant's release.

107563	BEREA MUNI.	G	CIVIL MUNI. & CITY
THE EAST OHIO GAS COMPANY, DBA, DOMINION ENERGY OHIO v THE CITY OF CLEVELAND			

Affirmed.

Frank D. Celebrezze, Jr., J., Mary Eileen Kilbane, A.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Negligence; immunity; R.C. Chapter 2744; R.C. 2744.02; R.C. 2744.03; proprietary function; excavation; One Call Utility Protection Service Act; R.C. 3781.25 et seq.; R.C. 3781.30.*

The trial court did not abuse its discretion in adopting the magistrate's decision. The trial court's judgment finding that the city was not negligent and immune from liability is supported by competent and credible evidence in the record.