

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 7

April 6, 2023

111471 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RICARDO VEGA, III

Dismissed.

Lisa B. Forbes, J., Anita Laster Mays, A.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Fourth-degree felony; prison sentence; R.C. 2953.08(G)(2); finding; R.C. 2929.13(B)(1)(b); firearm; R.C. 2953.08(A)(2).*

Appellant's appeal is dismissed because the trial court adopted a finding pursuant to R.C. 2929.13(B)(1)(b)(i), that appellant had a firearm when he committed the offense of improperly handling a firearm in a motor vehicle, and within its discretion imposed a prison term. Pursuant to R.C. 2953.08(A)(2), appellant was therefore required to seek leave to appeal his prison sentence. Having failed to seek leave, we cannot review his sentence and his appeal is dismissed.

111525 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v THOMAS A. GIARELLI

Affirmed and remanded.

Mary J. Boyle, J., Lisa B. Forbes, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Crim.R. 32.1; withdrawal of guilty plea; manifest injustice; abuse of discretion.*

Judgment affirmed. The trial court did not abuse its discretion in granting defendant's postsentence motion to vacate guilty pleas to correct a manifest injustice. The trial court judge, who presided over the criminal case from its onset, was in the best position to balance the credibility of the evidence, parties, and motions with the legal issues raised and determine whether a manifest injustice had occurred.

111533 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JADYN LOGAN

Affirmed and remanded.

Eileen A. Gallagher, J., and Anita Laster Mays, A.J., concur; Mary J. Boyle, J., concurs in judgment only.

KEY WORDS: *Attempt; R.C. 2923.02; having weapons while under disability; R.C. 2923.13(A)(2); firearm specification; R.C. 2941.141(A); mandatory prison term; R.C. 2929.13(F)(8); community control; R.C. 2929.15(A)(1); underlying felony; split sentence; plain error.*

The defendant pleaded guilty to attempted having weapons while under disability with a one-year firearm specification. The trial court sentenced her to one year in prison on the firearm specification and two years of community control on the underlying felony. The state appealed, arguing that the trial court was required to impose a mandatory prison term on the underlying felony as a result of the specification, that community control was not an authorized sentence and that the sentence violated the split-sentence doctrine.

The plain and unambiguous language of R.C. 2929.13(F)(8) requires that a trial court, when crafting a sentence for a felony (other than a violation of R.C. 2923.12) that is enhanced with a firearm specification, impose the definite prison term prescribed by R.C. 2929.14(B)(1)(a) as a mandatory prison term. The statute does not require the imposition of a mandatory prison term with respect to the felony underlying the firearm specification.

Where a trial court is not required to impose a prison sentence on an underlying felony, as here, a trial court may impose community-control sanctions on the underlying felony even where prison is mandatory for the accompanying specification. This does not constitute an unlawful “split sentence” because a specification is not part of the underlying offense but merely a sentencing enhancement to that offense.

As the trial court was not required to impose a prison term, mandatory prison term or term of life imprisonment on the defendant on the underlying felony here, R.C. 2929.15(A)(1) authorized the court to impose community-control sanctions on that offense. Sentence affirmed.

111535	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
PAMELA TAYLOR v BASF CATALYSTS LLC., ET AL.			

Reversed.

Kathleen Ann Keough, J., and Anita Laster Mays, A.J., concur; Sean C. Gallagher, J., concurs (with separate opinion attached).

KEY WORDS: *Law firm; Civ.R. 11; R.C. 2323.51; sanctions; frivolous; harassing; abuse of discretion; out-of-state decision; precedent.*

Trial court's decision finding law firm engaged in frivolous and harassing conduct to warrant imposition of sanctions under R.C. 2323.51 and Civ.R. 11 was unreasonable. The trial court's exclusive reliance on an out-of-state decision as precedent to support its findings was improper.

CASE DECISION LIST

111620 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KENNETH WILLIAMS

Affirmed.

Mary Eileen Kilbane, J., Anita Laster Mays, A.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Felonious assault; aggravated assault; inferior offense; serious provocation; self-defense; manifest weight of the evidence; bench trial.*

Appellant's conviction was not against the manifest weight of the evidence where the evidence showed that he knowingly caused serious physical harm to the victim during an ongoing argument in which both men were intoxicated, and the evidence does not support any of the elements of self-defense.

111744 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE A.B.

Affirmed.

Mary Eileen Kilbane, J., Frank Daniel Celebrezze, III, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Rape; R.C. 2907.02(A)(1)(b); cunnilingus; fellatio; sufficiency of the evidence; manifest weight of the evidence.*

The adjudication of delinquency was supported by sufficient evidence and was not against the manifest weight of the evidence where the victim testified that the appellant engaged in cunnilingus and fellatio with her.

111770 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
JACK M. SUBEL, ADMINISTRATOR, ET AL. v AMD PLASTICS, LLC, ET AL.

Affirmed in part; reversed in part; and remanded.

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

KEY WORDS: *Summary judgment; genuine issues of material fact; breach of contract; meeting of the minds; oral contract; clear and convincing evidence; question of fact; statute of frauds; agreement capable of being performed in one year; failure to pay commissions; R.C. 1335.11; enforceable contract; unjust enrichment; alternative theory of recovery; restitution.*

The trial court erred in granting appellees' motion for summary

CASE DECISION LIST

(Case 111770 continued)

judgment with regard to AMD on the Estate's claims for unjust enrichment. The trial court correctly granted summary judgment in favor of AMD on the Estate's claims for breach of contract, declaratory judgment, and failure to pay commissions under R.C. 1335.11, and did not err in granting summary judgment in favor of Coll.

111771 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
ALICIA PEROZENI v RENE PEROZENI

Affirmed.

Michael John Ryan, J., Kathleen Ann Keough, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: Final, appealable order; motion to vacate; timely appeal; R.C. 3105.171(J)(2); pretrial order for sale of marital real property; abuse of discretion.

A pretrial order for sale of marital real property is a final, appealable order. The timely filing of a notice of appeal is the only jurisdictional requirement for perfecting a valid appeal. It is within the discretion of an appellate court to allow or disallow an appeal that contains defects in a notice of appeal. Although the appellant has a defect in his notice of appeal, in our discretion, we find that we have jurisdiction to consider his appeal.

R.C. 3105.171(J)(2) allows for a pretrial sale of marital real property. The trial court did not abuse its discretion in granting appellee's pretrial motion to sell the marital residence.

111785 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ROBERT MILLER

Affirmed in part; reversed in part; and remanded.

Eileen T. Gallagher, J., Anita Laster Mays, A.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Child endangering; sufficient evidence; manifest weight; gross sexual imposition; joinder; simple and direct; other-acts evidence; plain error; ineffective assistance of counsel; felony sentencing; allied offenses; contrary to law.

The defendant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence. The trial court did not err by permitting the state to join the offenses for trial. The trial court did not commit plain error by permitting the state to explore the defendant's unindicted disciplinary practices. Trial counsel did not render ineffective assistance of counsel. The trial court imposed a prison term on a felony of the third degree that is contrary to law.

CASE DECISION LIST

111793 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CHARLES MENEFFEE

Affirmed in part; reversed in part; and remanded.

Eileen T. Gallagher, J., and Anita Laster Mays, A.J., concur; Eileen A. Gallagher, J., concurs (with separate opinion attached).

KEY WORDS: *Reagan Tokes Law; indefinite sentence; constitutional; qualifying offenses.*

Trial court erred in failing to reserve an indefinite sentence on a qualifying second-degree felony as required by the Reagan Tokes Law.

111803 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v BOBBY NIX, II

Reversed, vacated, and remanded.

Eileen A. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Crim.R. 48(B); dismissal with prejudice; abuse of discretion; violation of statutory or constitutional right; bar further prosecution.*

Where there was nothing in the record to indicate that any statutory or constitutional right was violated that would bar further prosecution of defendant, trial court abused its discretion in dismissing case with prejudice because it disliked the state's plan to wait until the alleged victim was 18 (when the state could contact alleged victim directly and avoid the intervention of her guardian) to discuss prosecution of the case. Case remanded with instructions to vacate dismissal with prejudice and enter dismissal without prejudice.

111868 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RICARDO PARKE

Affirmed.

Anita Laster Mays, A.J., Kathleen Ann Keough, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Manifest weight of the evidence; sufficiency of the evidence; Reagan Tokes Law.*

The appellant's convictions were not against the manifest weight of

CASE DECISION LIST

(Case 111868 continued)

the evidence because the appellant failed to demonstrate that the jury clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. There was sufficient evidence to convict appellant of disruption of public services because appellant purposely kept the victim from calling emergency services by taking her cell phone. The appellant's sentence in accordance with the Reagan Tokes Law has been ruled constitutional.

111902 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
LUCIANA GILMORE v CARL O. GUESS

Affirmed.

Mary Eileen Kilbane, J., Frank Daniel Celebrezze, III, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Civ.R. 53(D)(3)(b)(iv); objections to magistrate's decision; plain error; absence of transcript; and regularity of proceedings.

Where the appellant failed to object to the magistrate's decision and argue plain error pursuant to Civ.R. 53(D)(3)(b)(iv) and appellant failed to file a transcript of the lower court's proceedings, the appellant's assignment of error is overruled.

111930 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v LAMAR PETTY

Reversed and remanded.

Lisa B. Forbes, J., and Sean C. Gallagher, J., concur; Mary Eileen Kilbane, P.J., dissents (with separate opinion).

KEY WORDS: Motion to disclose confidential informant's identity; abuse of discretion.

The trial court's granting the defendant's motion to disclose confidential informant's identity is reversed. The defendant failed to show that the identity of the confidential informant was necessary to establish an element of the offenses with which he was charged or would be beneficial to his case, and he failed to show that his need for the information outweighs the government's interest in keeping the identity of the informant a secret.

CASE DECISION LIST

112126	CLEVELAND MUNI. CITY OF CLEVELAND v ERIC A. HESS	C	Criminal Muni. & City
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Reversed and remanded.

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

KEY WORDS: *R.C. 2951.022; concurrent supervision; longest possible term of incarceration.*

Offender was sentenced to a term of community-control sanctions with a possible term of incarceration of 180 days in a municipal court. While under supervision with the municipal court, offender was convicted of felony offenses in a court of common pleas and sentenced to a term of community control with a possible term of incarceration of 42 months. When sentenced on the felony offenses and placed on community-control supervision with the court of common pleas, offender was a “concurrent supervision offender” pursuant to R.C. 2951.022(A)(1)(c). As such, offender was subject to supervision by only the court in which he faced the longest possible term of incarceration. R.C. 2951.022(B)(1). Because offender faced a longer term of incarceration in the court of common pleas, offender’s motion in the municipal court to terminate his probation should have been granted.