

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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August 19, 2021

109258	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v MICHAEL MARNEROS			

Affirmed.

Mary Eileen Kilbane, J., Michelle J. Sheehan, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Turn signal; lane change; probable cause; Fourth Amendment; search and seizure; motion to suppress properly denied; sufficient evidence; ineffective assistance of counsel; expert witness; qualified to testify regarding firearm operability; manifest weight; jury instruction; constructive possession of a firearm; maximum sentences; proper sentence within statutory range.*

Officers had probable cause to effectuate a traffic stop when an officer witnessed the defendant pull out of a gas station onto a highway without using a turn signal in violation of the traffic code. Because there was probable cause, any motion to suppress alleging an improper stop would have been denied. Therefore, trial counsel was not ineffective for deciding not to file a motion to suppress. Similarly, counsel was not ineffective for failing to object to testimony regarding the operability of the firearm as the witness was qualified to do so. The defendant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. The trial court gave the correct jury instruction on constructive possession and its imposition of the maximum sentences within the proper statutory framework were not contrary to law.

109339	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v PATRICIA L. MARRIOTT			

Affirmed.

Lisa B. Forbes, J., Anita Laster Mays, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Ineffective assistance of counsel; prejudice; no contest plea; guilty plea; appellate review; motion in limine; ruling; docket silent; presumed denied.*

A trial court speaks through its docket. For appellate review, if the docket does not reveal a ruling on the motion it is presumed denied. Here, appellant claimed ineffective assistance of counsel regarding her guilty plea, arguing if she pled no contest that she could challenge the court's ruling on the state's motion in limine on appeal. However, a review of the docket reveals that the court never ruled on the state's motion in limine. As such, we presume the state's motion in limine was

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denied and thus appellant can demonstrate no prejudice.

109593	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v MARK FRY			

Vacated and remanded.

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

KEY WORDS: *R.C. 2971.03(B)(1)(c); R.C. 2907.02(A)(1)(b); rape of a child; felonious assault; indictment; guilty plea; Sixth Amendment; sentencing; not contrary to law.*

A defendant convicted of violating R.C. 2907.02(A)(1)(b) can only be sentenced to a mandatory minimum 25 years to life pursuant to R.C. 2971.03(B)(1)(c) when the facts to establish the factors listed in (c) are either submitted to a jury and proven beyond a reasonable doubt, or admitted to by the defendant. Here, defendant's guilty plea to rape and to a felonious assault with a sexual motivation specification the same day as the rape offense establishes that the defendant during or immediately after the commission of the offense caused serious physical harm to the victim. Defendant's guilty plea admits the necessary facts to establish the prerequisite factors of R.C. 2971.03(B)(1)(c) such that a sentence of 25 years to life is required by law; however, the trial court did not have authority to add additional years to that sentence, such that the defendant's sentence of 30 years to life was contrary to law.

110033	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ANDRE CARSWELL			

Affirmed and Remanded.

Anita Laster Mays, J., Mary J. Boyle, A.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Maximum sentences; R.C. 2929.11; R.C. 2929.12; contrary to law; consecutive sentences; R.C. 2929.14(C)(4); nunc pro tunc.*

The trial court did not err in sentencing the appellant to maximum sentences because the sentences were not contrary to law. The sentences were within the statutory range and the trial court considered all of the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the sentencing factors set forth in R.C. 2929.12. The trial court made the required findings for the imposition of consecutive sentences and the court's findings are supported by the record. However, the trial court failed to incorporate its consecutive-sentence findings in the journal entry.

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(Case 110033 continued)

The case is remanded for the limited purpose of having the trial court issue a nunc pro tunc entry to incorporate its consecutive-sentence findings.

110091	DOMESTIC RELATIONS	F	CIVIL C.P.-JUV, DOM, PROBATE
VLADIMIR B. VICTOR v MARINA KAPLAN			

Affirmed.

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

KEY WORDS: *Arbitration; motion to stay pending arbitration; waiver; abuse of discretion.*

A trial court does not abuse its discretion by granting a motion to stay pending arbitration where based on the totality of the circumstances, the party requesting arbitration has not acted inconsistently with the right to arbitrate. A trial court does not abuse its discretion finding that party has not waived its right to arbitrate where the facts in the case demonstrate: (1) the delay caused by the requesting part was reasonable and justified, (2) the requesting party's action in the case was not inconsistent with arbitration, (3) the requesting party has not invoked the trial court's jurisdiction and (4) the non-requesting party has not been prejudiced by the requesting party's inconsistent acts.

110119	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV, DOM OR PRO
TAX EASE OHIO II, LLC v JOE LEACH			

Affirmed.

Kathleen Ann Keough, P.J., Michelle J. Sheehan, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Tax certificates; summary judgment; Evid.R. 803(14); affidavit.*

Trial court did not err in granting summary judgment to owner of tax certificates where the tax certificates were admissible under Evid.R. 803(14) as records of documents affecting an interest in real property; the affidavit of the owner's agent attached to the owner's motion for summary judgment authenticated the tax certificates, establishing that the owner was the holder of the tax certificates; under R.C. 5721.37(F), the certificates were presumptive evidence of the amount, validity, and nonpayment of the liens represented by the certificates; and appellant produced no evidence to rebut the owner's evidence.