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Court of Appeals, Eighth Appellate District

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December 5, 2019

105455 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v WILLIAM SKERKAVICH

Vacated and remanded.

Frank D. Celebrezze, Jr., J., and Kathleen Ann Keough, J., concur; Mary Eileen Kilbane, A.J., concurs in judgment only.

KEY WORDS: *Evid.R. 614(B); judicial questions of witness; R.C. 2945.06; bench trial; biased and prejudicial judge; structural error.*

In a bench trial, the judge's questions to the defendant demonstrated bias and prejudice. The judge abandoned his duty as an impartial factfinder and interrogated the defendant on matters that were inadmissible and immaterial. As such, the presence of a biased and prejudicial judge was a structural error requiring reversal of the defendant's conviction.

107724 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DWAYNE SIMS

Dismissed.

Mary Eileen Kilbane, A.J.; Michelle J. Sheehan, J., concurs with separate opinion; Mary J. Boyle, J., dissents with separate opinion.

KEY WORDS: *Anders standard; former Loc.App.R. 16(C).*

Anders outlines the procedure that counsel must follow to withdraw because of the lack of any meritorious grounds for appeal. In Anders, the United States Supreme Court held that if appointed counsel, after a conscientious examination of the case, determines the appeal to be wholly frivolous, he or she should advise the court of that fact and request permission to withdraw. This request must be accompanied by a brief identifying anything in the record that could arguably support the appeal. Counsel must also furnish the client with a copy of the brief, and allow the client sufficient time to file his or her own brief, pro se. Once appellate counsel satisfies these requirements, this court must fully examine the proceedings below to determine if any arguably meritorious issues exist. If we determine that the appeal is wholly frivolous, we may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements, or we may proceed to a decision on the merits if state law so requires.

Sims's appointed counsel reviewed the record and concluded he could not make any meritorious arguments on Sims's behalf. Nevertheless, counsel presented the following potential issue for our Anders review: (1) the trial court could have sustained Sims's

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motion to suppress, and (2) the plea hearing failed to comply with Crim.R. 11. Following our independent review of the entire record, we find that no meritorious argument exists and that an appeal would be wholly frivolous. As a result, counsel's request to withdraw is granted and the appeal is dismissed.

107969 CLEVELAND MUNI. G CIVIL MUNI. & CITY
ANNE M. KEBE v LATASHIA JENKINS BUSH

Affirmed.

Larry A. Jones, Sr., J., Anita Laster Mays, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Civ.R. 53/objections to the magistrate's decision; abuse of discretion; Civ.R. 60(B)/motion for relief from judgment; plain error.

There was no abuse of discretion where the trial court struck appellant's objections to the magistrate's decision. Appellant's filing was untimely.

Appellant's filing of a motion for relief from judgment was not the proper procedure where the trial court had not issued a final order. Upon the trial court issuing that final order, appellant failed to file a new motion for relief from judgment; therefore appellant's argument that the trial court denied her Civ.R. 60(B) motion is not properly before this court.

108001 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RAYSHON L. BLACK

Affirmed.

Michelle J. Sheehan, J., and Raymond C. Headen, J., concur; Sean C. Gallagher, P.J., concurs with separate concurring opinion.

KEY WORDS: Rape; hearsay; Evid.R. 801(D)(1); prior consistent statements; plain error; ineffective assistance of counsel; manifest weight.

Evidence of the victim's prior consistent statements was properly admitted under Evid.R. 801(D)(1)(b) where the statements were offered to rebut a charge of improper motive and were made prior to the motivation to fabricate. Additionally, medical records containing a purported hearsay statement by the victim that her stepfather raped her did not constitute plain error where the victim testified that her stepfather raped her and the appellant did not demonstrate that the alleged hearsay statement altered the outcome of the trial. The failure of trial counsel to object to the victim's prior consistent statements did not constitute ineffective assistance of counsel. Appellant's conviction for rape and kidnapping is not

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against the manifest weight of the evidence where the victim testified that her stepfather raped her and her testimony is supported by the testimony of other witnesses.

108113 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v G.F. A.

Reversed and remanded.

Mary Eileen Kilbane, A.J., and Eileen A. Gallagher, J., concur; Mary J. Boyle, J., dissents with separate opinion.

KEY WORDS: Motion to seal record; R.C. 2953.32; liberally granted; abuse of discretion; state findings on record; balance interests. Judgment reversed and remanded.

In its denial, the court stated its findings, basing the denial on the expungement report. Appellant's interest in a potential job prospect outweighed the state's public right to open records justification. Because appellant met his burden and his needs outweigh the legitimate interests of the state in maintaining the records, the trial court should have freely granted the application. Therefore, the trial court abused its discretion in denying appellant's application to seal his record.

108220 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DAVID EDWARDS

Affirmed.

Mary J. Boyle, P.J., Sean C. Gallagher, J., and Anita Laster Mays, J., concur.

KEY WORDS: Competency hearing; R.C. 2945.37; guilty plea; Crim.R. 7; amended indictment; consecutive sentences; contrary to law.

The trial court's failure to hold a competency hearing was harmless as the record did not contain an indicia that the defendant was not competent. The amendment to one of the indicted counts, which changed the identity of the victim, did not alter an essential element of the crime charged, and as a result, the defendant did not suffer prejudice. The record clearly and convincingly supported the trial court's imposition of consecutive sentences.

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108257 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MELVIN POLLARD v WELLS FARGO BANK, NATIONAL ASSOCIATION

Affirmed.

Mary J. Boyle, P.J., Sean C. Gallagher, J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *Summary judgment; foreclosure; standing; R.C. 1343.01; rescission.*

The trial court's order granting Wells Fargo summary judgment is affirmed. Wells Fargo established that it had standing and attached evidentiary quality materials to its motion for summary judgment showing that it was entitled to foreclosure. The defendant-appellant did not meet his reciprocal burden on summary judgment.

108262 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v BRANDON HARDY

Affirmed.

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

KEY WORDS: *Guilty plea sentence; ineffective assistance of counsel; mitigating factors. Judgment affirmed.*

Defendant's sentence should not be vacated because the mitigating factors defendant complains of were already before the court in the PSI and brought to the court's attention at the sentencing hearing. Therefore, defendant could not show a reasonable probability that the outcome of his sentencing would have been different.

108291 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v D.D.G.

108342 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v D. G.

Affirmed.

Mary J. Boyle, J., and Michelle J. Sheehan, J., concur; Mary Eileen Kilbane, A.J., concurs in part and dissents in part with separate opinion.

KEY WORDS: *Application for sealing; R.C. 2953.31; R.C. 2953.32; eligible offender; hearing; harmless error.*

In the defendant's first lower court case, the trial court properly denied the defendant's application for sealing because he was not

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an “eligible offender” under R.C. 2953.31. In the defendant’s second lower court case, the trial court’s failure to set a hearing date for the defendant’s application for sealing was harmless error as the defendant was not an “eligible offender” under R.C. 2953.31 and the error did not affect the defendant’s substantial rights. Contrary to the defendant’s assertions, R.C. 2953.32(B) does not require a trial court to hold a hearing on an offender’s application for sealing when the offender is not eligible as a matter of law and that ineligibility can be established by proof or documentation included in the record.

108355 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE C.D.Y., ET AL.

Reversed and remanded.

Patricia Ann Blackmon, J., Mary Eileen Kilbane, J., concurs in judgment only; Sean C. Gallagher, J., concurs in part and dissents in part with separate opinion.

KEY WORDS: *Legal custody; motion to modify custody; legal custody to nonparent.*

The court erred by granting legal custody of children to nonparent who failed to file a motion to request custody as required under R.C. 2151.353(A)(3).

108564 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: J.J.

Affirmed.

Michelle J. Sheehan, J., Mary J. Boyle, P.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *Permanent custody; R.C. 2151.414; clear and convincing evidence; reunification; involuntary termination; best interest of the child.*

The trial court’s decision granting permanent custody of the child to the agency is affirmed. Clear and convincing evidence supported the court’s finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent, under R.C. 2151.414(B)(1)(a). The record demonstrated that the parents failed to remedy the conditions that initially caused the child to be placed outside the home, namely Mother’s mental health and substance abuse issues, domestic violence, and housing. The record also reflected that all five of Mother’s other children, one of whom was also Father’s child, had been removed from Mother’s care and custody and placed into the permanent custody of the agency. Mother has failed to rebut the presumption that because her parental rights were involuntarily terminated as to all of her other five children that she is not a suitable parent for additional children. Additionally, clear and convincing evidence supported the court’s determination that permanent custody is in the child’s best interest.

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108566 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE

IN RE: L.H.

Affirmed.

Larry A. Jones, Sr., J., and Eileen A. Gallagher, J., concur; Sean C. Gallagher, P.J., concurs with separate concurring opinion.

KEY WORDS: *R.C. 2151.413(A)/permanent custody; modification of case plan; ineffective assistance of counsel.*

Although Mother erroneously cited R.C. 2151.416(D)(3)(b), Mother's reasonable efforts argument is, nonetheless, misplaced. The Agency filed its motion for permanent custody under R.C. 2151.413(A), not 2151.413(D)(3)(b), which covers reasonable efforts.

There was no ineffective assistance of counsel. Mother failed to complete services previously presented to her and declined the referral of additional services. Mother's counsel did not fail where he did not request at hearing for additional services to be added to the case plan.

108912 BEDFORD MUNI. G CIVIL MUNI. & CITY

UMH OH BUCKEYE II, L.L.C. v JAMES A. DECARLO

Vacated.

Kathleen Ann Keough, J., Sean C. Gallagher, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Conceded error; forcible entry and detainer; R.C. 1923.04; notice; jurisdiction.*

Trial court lacked jurisdiction to consider forcible entry and detainer action because the plaintiff failed to comply with the notice requirement pursuant to R.C. 1923.04, which is a precondition to invoke the court's jurisdiction. The notice must be served by the person who desires to commence the action for forcible entry and detainer.