

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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**December 12, 2019**

<b>107467</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v KRILLIAN HOWARD			

<b>107468</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v KRILLIAN HOWARD			

<b>107469</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v KRILLIAN HOWARD			

Affirmed.

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

**KEY WORDS:** *R.C. 2953.08; R.C. 2152.10; R.C. 2152.12; Juv.R. 30; probable cause determination; agreed sentence; unreviewable sentence.*

*In the context of mandatory transfer, a juvenile court does not err by determining there is probable cause to believe a child committed aggravated robberies, where substantial evidence, including surveillance video footage and witness testimony, clearly implicates the child as the perpetrator, regardless of whether a witness makes an in-court identification. A sentence within a jointly-recommended range is not reviewable where the sentencing judge imposes a sentence within that range that is authorized by law.*

<b>107784</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v TYJOHN PRESCOTT			

<b>107789</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v TYJOHN PRESCOTT			

Affirmed.

Larry A. Jones, Sr., P.J., and Raymond C. Headen, J., concur; Michelle J. Sheehan, J., concurs in judgment only.

**KEY WORDS:** *Sufficiency; Evid.R. 404(B)/other acts evidence; pretrial motion in limine.*

*Victim witness identification, appellant's access to the vehicle that was used in the robberies, cell phone records, and the sale of several victims' cell phones was sufficient enough evidence to link appellant to the robberies.*

*Under Evid.R. 404(B), it was error for the trial court to admit into evidence certain of appellant's social media posts; however, that error was harmless in light of the substantial other evidence that supported appellant's convictions.*

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**107821** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MARVIN HAWKINS

Reversed and remanded.

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

**KEY WORDS:** *Criminal statute of limitations; commencement of a prosecution; due diligence to execute process on an indictment; purposely avoiding prosecution; ineffective assistance of counsel.*

*Appellant's conviction is reversed, and the matter is remanded because his trial counsel provided ineffective assistance in failing to file a motion to dismiss the indictment on grounds of the state's failure to commence the criminal action in compliance with R.C. 2901.13.*

**107824** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
BRANDON M. DEAN v CUYAHOGA COUNTY FISCAL OFFICE, ET AL.

Affirmed.

Frank D. Celebrezze, Jr., J., Eileen T. Gallagher, P.J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Motion to dismiss; Civ.R. 12(B)(6); standing; R.C. 2723.03; R.C. 5715.22; R.C. 5717.01; R.C. 5717.011; R.C. 5717.05; Board of Tax Appeals; Board of Revision; unjust enrichment; declaratory judgment.*

*Appellant does not have standing to bring an action seeking reimbursement for alleged overpayment of property taxes because appellant did not own the property and did not make the property tax payments. Appellant's equitable claims fail as a matter of law because such equitable claims are not actionable against municipalities. As such, the trial court did not err in granting appellees' motion to dismiss for failure to state a claim.*

**107937** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
JOHN KOSTOGLU v JOHN FORTUNA, ET AL.

Affirmed.

Frank D. Celebrezze, Jr., J., and Michelle J. Sheehan, J., concur; Sean C. Gallagher, P.J., concurs in judgment only with separate opinion attached.

**KEY WORDS:** *Motion for relief from judgment; Civ.R. 60(B); evidentiary hearing.*

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Appellants failed to comply with multiple motions to compel discovery. As a result, the trial court issued an order to compel discovery. Appellants failed to comply with the trial court's order, and appellee then filed a motion for entry of judgment, which was granted by the trial court. Appellants then filed a motion for relief from judgment. The trial court did not abuse its discretion in denying appellants' motion for relief from judgment because appellants provided no affidavits to support their assertions within the motion and provided no new grounds for relief. The trial court also did not abuse its discretion by failing to hold a hearing on appellants' motion for relief from judgment.

<b>108048</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JOSE RODRIGUEZ			

Affirmed.

Eileen A. Gallagher, J., Mary Eileen Kilbane, A.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Res judicata; resentencing; postrelease control; sufficiency of the evidence; ineffective assistance of counsel.*

*Defendant's challenge to his sentence based on trial court's failure to impose a firearm specification is barred by res judicata where he could have and did previously raise the challenge. Where a trial court fails to impose postrelease control as part of a sentence, the court does not err by conducting a limited resentencing for the purpose of imposing postrelease control. A defendant's subsequent challenge to the sufficiency of the evidence is res judicata where he could and did challenge the sufficiency of the evidence pursuant to direct appeal. A defendant's ineffective assistance of counsel claim fails where it is based on previously raised and rejected arguments, or where it challenges conduct that was outside the scope of representation.*

<b>108133</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ANDRE PARKER			

Affirmed.

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

**KEY WORDS:** *Presentence motion to withdraw plea; Crim.R. 32.1; Crim.R. 11.*

*The trial court did not abuse its discretion when it denied defendant's motion to withdraw his plea. Although he filed his motion before he was sentenced, defendant had been represented by counsel at his plea hearing; defendant knowingly, voluntarily, and intelligently entered into his plea; and the trial court gave him a*

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(Case 108133 continued)

**full hearing on his Crim.R. 32.1 motion after which the trial court determined that defendant's request to withdraw his plea was not based upon a legitimate or reasonable basis.**

**108168** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
NORTH HILL HOLDINGS, LLC v JOSEPH E. CONCHECK, ET AL.

Affirmed.

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

**KEY WORDS:** *Limited liability company; formation; standing; operating agreement; R.C. 1705.14.*

***The trial court did not err in finding plaintiff lacked standing to bring the lawsuit against a limited liability company because there was no evidence in the record showing plaintiff was a member of the limited liability company under the provisions of R.C. 1705.14.***

**108205** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v A.H.

Reversed and remanded.

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

**KEY WORDS:** *Sealing record of conviction; R.C. 2953.31; R.C. 2953.36; R.C. 2907.06; sexual imposition.*

***R.C. 2953.36 precludes an offender convicted of sexual imposition under R.C. 2907.06 from applying R.C. 2953.31 to seal his record of conviction.***

**108224** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v GINA M. HULER

Affirmed.

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

**KEY WORDS:** *Sufficiency of evidence; aggravated arson.*

***Sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law. When reviewing the sufficiency of the evidence to support a criminal conviction, an appellate court examines the evidence admitted at trial to determine***

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(Case 108224 continued)

whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.

Huler was charged with aggravated arson R.C. 2909.02(A)(2), which provides that no person, by means of fire or explosion, shall knowingly cause physical harm to any occupied structure. The state established that the house was an occupied structure, that a fire occurred, and that the fire resulted in approximately \$4,200 worth of damages. The state, through the fire investigator, laid out the four classifications for causes of a fire as accidental, natural, incendiary, and undetermined. The state meticulously eliminated any possibility that the fire was accidental, because there was no evidence of an electrical short and no evidence of the failure of an equipment or tool. The state also eliminated the possibility that the fire resulted from natural causes, such as lightning strike, flood, or high winds. The state eliminated the undetermined classification by presenting evidence that Huler intentionally set three separate fires in three separate locations in the house and a fourth was attempted, but failed to erupt.

The state presented evidence of three distinct fire patterns, which had no connection to each other and did not spread across the ceiling as a normal house fire would spread. The forensic lab report indicated that three of the five samples tested positive for ignitable liquids; debris from the trash can on the stairs tested positive for acetone; debris from the attic tested positive for gasoline, and the plastic water bottle tested positive for gasoline. The forensic lab report also indicated the gasoline was fresh, not weathered or aged gasoline.

Because the state presented evidence eliminating any possibility that the fires were accidentally caused, were naturally caused, or were undetermined, the cause of the fires was classified as incendiary and Huler was responsible. As a result, the state presented sufficient evidence to support Huler's conviction for aggravated arson.

<b>108234</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v MARVIN TEASLEY			

Affirmed.

Mary Eileen Kilbane, A.J., Kathleen Ann Keough, J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Sufficiency; burglary; R.C. 2911.12(A)(2); trespass; stealth.*

**R.C. 2911.12(A)(2), provides:** *No person, by force, stealth, or deception, shall trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure*

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(Case 108234 continued)

that is a permanent or temporary habitation of any person when any person other than an accomplice of the offender is present or likely to be present, with purpose to commit in the habitation any criminal offense.

The evidence presented established that Teasley had no legal right to be unescorted in the building. While a guest of a tenant of the building, Teasley should have been accompanied by his host. Tenants were allowed to have guests, who could stay up to a maximum of three consecutive days with prior approval. During that stay, the guest must sign in when entering the complex and must be accompanied by the tenant when visiting the common areas. Teasley applied to be a tenant, but HUD did not approve his application. As a result, despite Teasley's contention, he had no legal right to be present unescorted or unaccompanied in the building and was therefore trespassing.

Although Teasley used Banks's keys to enter the building, he had no legal right to be in possession of the keys. It was a violation of the HUD guidelines for Banks to have given her keys to Teasley. As a result, although Teasley did not gain access to the building by force, his entrance was gained through stealth and deception.

Stealth is not defined in the Revised Code as it relates to burglary. Ohio courts have defined "stealth" as "any secret, sly or clandestine act to avoid discovery and to gain entrance into or to remain within a residence of another without permission."

Teasley entered the building at approximately 1:00 a.m. by using a key, which he had no legal right to possess. He then proceeded to the community room, where he had no legal right to be present unaccompanied. He committed the offense of burglary, through stealth, when he removed the television from its mount and wheeled it out of the building. Based on the foregoing, the state presented sufficient evidence to support Teasley's burglary conviction.

<b>108235</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v YVONNE HALL			

Affirmed.

Larry A. Jones, Sr., J., Eileen T. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Motion to withdraw as counsel; Crim.R. 32.1/motion to withdraw guilty plea.*

*During the plea colloquy, appellant stated that she understood the charges against her and the penalties she faced; appellant also stated that she was satisfied with her legal representation; appellant's father's relationship with trial counsel was not such that it interfered with trial counsel's representation of appellant. The trial court did not abuse its discretion where it denied trial counsel's motion to withdraw.*

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(Case 108235 continued)

**Appellant failed to show any justifiable reason why her guilty plea should have been withdrawn. There was no abuse of discretion where the trial court denied appellant's motion to withdraw her guilty plea.**

<b>108239</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v TOMIKA JONES-MCFARLANE			

Affirmed.

Sean C. Gallagher, J., and Patricia Ann Blackmon, J., concur; Mary J. Boyle, P.J., concurs in judgment only.

**KEY WORDS:** *Guilty plea; Crim.R. 11 advisements; ineffective assistance of counsel; sentencing range.*

***A maximum sentence is not per se unreasonable based on the fact that the offense is a misdemeanor and the guilty plea was knowingly, voluntarily, and intelligently entered following a plea colloquy in which the trial court provided the necessary constitutional and nonconstitutional advisements as set forth in Crim.R. 11.***

<b>108243</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v COURTNEY SPRACHMANN			

Affirmed and remanded.

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

**KEY WORDS:** *Withdrawing plea; consecutive sentences; court costs.*

***A trial court does not abuse its discretion in denying a motion to withdraw a no contest plea based on ineffective assistance of counsel where the defendant does not claim prejudice or indicate she would have otherwise rejected the plea. A challenge to consecutive sentences fails where the trial court made the requisite R.C. 2929.14(C)(4) findings and where this court cannot clearly and convincingly find that the record does not support the trial court's consecutive sentence findings. A trial court errs where the record reflects that it waived court costs at the sentencing hearing but where its journal reflects that it imposed court costs. Such error may be corrected via nunc pro tunc journal entry that reflects what happened at sentencing.***

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**108441** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE K.V.

Reversed and remanded.

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

**KEY WORDS:** *Trial court; orders; magistrate's decision; Juv.R. 40; transcript of magistrate's hearing; independent review.*

*After a party objected to the magistrate's decision and that party was granted leave to file the relevant transcript, the trial court was required to conduct an independent review prior to adopting the magistrate's decision. The juvenile court failed to comply with Juv.R. 40(D) and abused its discretion when it adopted the magistrate's decision before reviewing the transcript and conducting an independent review.*

**108442** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE A.C.

Reversed and remanded.

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

**KEY WORDS:** *Legal custody; Juv.R. 40(D)(3)(b)(iii); objections to magistrate's decision; transcript; Juv.R. 40(D)(4)(d); independent review; adopting magistrate's decision; abuse of discretion.*

*Where mother timely filed objections that raised a manifest-weight-of-the-evidence challenge to magistrate's determination that awarding legal custody to father would be in child's best interest and juvenile court granted mother's request for a transcript of the legal custody hearing, juvenile court abused its discretion in overruling mother's objections and adopting magistrate's decision before receiving the transcript of the hearing and conducting the independent review required by Juv.R. 40(D)(4)(d). Pursuant to Juv.R. 40(D)(3)(b)(iii), mother should be afforded at least 30 days from the time she filed her objections to file the transcript before juvenile court ruled on her objections and approved and adopted the magistrate's decision. Judgment reversed and case remanded for juvenile court to conduct the independent review required by Juv.R. 40(D)(4)(d).*



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<b>108567</b>	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE M.S.			

Affirmed.

Eileen A. Gallagher, J., Mary Eileen Kilbane, A.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Legal custody; preponderance of the evidence; best interest of the child; manifest weight of the evidence; abuse of discretion.*

*Juvenile court did not abuse its discretion in awarding legal custody of child to father. Juvenile court's determination that it was in child's best interest to be placed in the legal custody of father was supported by a preponderance of competent, credible evidence, was not against the manifest weight of the evidence and was not arbitrary, unconscionable or unreasonable. Even though child indicated that he preferred to live with mother, child, who had good relationships with both parents, had been thriving while under father's care for the past one-and-one-half years and mother's drug relapse shortly before the hearing raised concerns regarding whether she was the most appropriate caregiver for the child.*

<b>109097</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v THOMAS HAWKINS			

Affirmed.

Mary J. Boyle, P.J., and Larry A. Jones, Sr., J., concur; Kathleen Ann Keough, J., dissents with separate opinion.

**KEY WORDS:** *Bail; R.C. 2937.222.*

*The trial court's factual findings supporting its decision to revoke the defendant's bail was supported by the record.*