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February 27, 2020

107888 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DWAYNE MCCULLY

Reversed and remanded.

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

KEY WORDS: *Conviction; sentence; jury; instruction; rule; mandatory; harmless error; prejudice; substantial right; burden; written; audio; copy.*

The trial court committed reversible error by failing to provide the jury with either a written or record copy of its final instructions for reference during deliberations pursuant to Crim.R. 30(A).

108123 PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
KEYBANK NATIONAL ASSOCIATION, TRUSTEE v HEATHER THALMAN, ET AL.

Affirmed.

Eileen T. Gallagher, A.J., Sean C. Gallagher, J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Heirs; trusts; split; distributions; fiduciary duty; attorney fees; counterclaims; breached; dividing; declaratory judgment; investment account; breach of trust; liquidation; recombined; damages; summary judgment; interest; punitive; law of the case; mandate rule.*

The decision in a prior appeal of the case, that the trustee had divided the trust into two separate trusts for the separate benefit of the two beneficiaries pursuant to R.C. 5804.17, that plaintiff's counterclaims were perfunctory, and that the parties were to bear their own attorney fees was the law of the case and was binding on all of the parties. The mandate of the prior appeal left nothing for the trial court to consider further on remand.

108277 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TARIQ M. DEBARDELEBEN

Affirmed.

Anita Laster Mays, J., Patricia Ann Blackmon, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *R.C. 2903.041, reckless homicide, R.C. 2903.02(B), felony murder, R.C. 2903.11(A)(1), felonious assault, R.C. 2919.22(A),*

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R.C. 2919.22(B)(1), and R.C. 2919.22(B)(2), endangering children, sufficiency of the evidence, manifest weight of the evidence, mistrial, cumulative errors, and prosecutorial misconduct.

Appellant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence where the minor decedent was in the care, custody, and control of appellant at the time the fatal injuries were suffered. The trial court's refusal to declare a mistrial was not an abuse of discretion where the allegedly prejudicial outburst by spectators at the close of the day's proceedings was immediately addressed by the trial court and the trial court issued a corrective instructive promptly after the jury was seated the next morning. Appellant failed to demonstrate that the prosecutor's conduct deprived appellant of a fair trial. Cumulative error does not apply where the appellant's arguments do not constitute error.

108286	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v REGINALD HEISE			

108776	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v REGINALD HEISE			

Affirmed.

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

KEY WORDS: Defect; indictment; statute; void; conduct; plea; waive; knowing; intelligent; voluntary; withdraw; ineffective; deficient; counsel; prejudice; hearing; abuse of discretion; timeliness; affidavit.

Appellant's arguments concerning the sufficiency of his indictment rely on a misinterpretation of the criminal statute governing his conduct. Defendant has failed to meet his burden of demonstrating the existence of a manifest injustice that warrants the withdrawal of his guilty plea.

108326	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ANTHONY HINES			

Reversed and remanded.

Mary Eileen Kilbane, J., and Eileen A. Gallagher, P.J., concur; Michelle J. Sheehan, J., concurs in judgment only.

KEY WORDS: Motion to withdraw guilty plea; presentence; abuse of discretion.

The trial court abused its discretion in denying appellant's

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presentence motion to withdraw his guilty plea. Appellant, after pleading guilty, immediately took steps to find new counsel and withdraw his plea.

108351	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ROBERT OTHBERG			

Dismissed.

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

KEY WORDS: *Anders brief, motion to withdraw, presentence-investigation report, Crim.R. 32.2, R.C. 2947.06.*

Appellate counsel's motion to withdraw filed in compliance with Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), is granted and the appeal is dismissed after a thorough review of the record fails to reveal any meritorious arguments for appeal. The trial court's failure to order a presentence-investigation report is not error. A presentence report is not required where the appellant is not eligible for probation or community control sanctions.

108360	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DEYONTE BARNES, aka, DEYONTE BARNES, SR.			

Affirmed.

Patricia Ann Blackmon, J., Mary J. Boyle, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Felony sentences.*

Defendant's five-year prison sentence is not contrary to law, and the court considered the proper statutory factors.

108367	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v KENNETH L. HOBBS			

Affirmed.

Sean C. Gallagher, J., Eileen T. Gallagher, A.J., and Mary J. Boyle, J., concur.

KEY WORDS: *R.C. 2919.21(B); criminal nonsupport; motion to dismiss; emancipation; current legal obligation; support; presentence motion to withdraw; guilty plea; abuse of discretion.*

Affirmed appellant's conviction for criminal nonsupport of a

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dependent in violation of R.C. 2919.21(B). The trial court did not err in denying appellant's motion to dismiss the indictment. Although the indictment was filed after the child's emancipation, the charges arose from appellant's failure to pay support during time periods prior to the child's emancipation while he was under a current legal obligation of support. The trial court did not abuse its discretion in denying appellant's presentence motion to withdraw his guilty plea.

108394	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v CRAIG A. COWAN			

Affirmed.

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

KEY WORDS: Motion for leave to file a motion for a new trial; unavoidable delay; public records request.

The trial court did not abuse its discretion in denying appellant's motion for leave to file a motion for a new trial without a hearing. The documents submitted by appellant did not on their face support appellant's claim that he was unavoidably prevented from timely discovering the purported new evidence.

108408	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v WILLIAM J. THOMAS			

Dismissed.

Mary Eileen Kilbane, J., Larry A. Jones, Sr., P.J., and Raymond C. Headen, J., concur.

KEY WORDS: Jointly recommended sentence, jurisdiction, authorized by law, mandatory sentencing provisions.

Appellant-defendant argued that his sentence was contrary to law. Defendant had agreed upon a sentencing recommendation; because his sentence was within the recommended range and not contrary to law, we dismissed the appeal.

108457	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v SCORONE HINES			

Reversed, defendant discharged.

Patricia Ann Blackmon, P.J., Anita Laster Mays, J., and Raymond C. Headen, J., concur.

KEY WORDS: R.C. 2929.34(B)(3)(d); prison; R.C. 2903.06;

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aggravated vehicular homicide; R.C. 2901.01(A)(9); R.C. 2929.15; community control; technical violation.

The trial court erred in concluding that defendant who committed a fifth-degree felony was ineligible for confinement at a Targeted Community Alternative to Prison, under R.C. 2929.34, due to his prior aggravated vehicular homicide conviction, because aggravated vehicular homicide is not a disqualifying offense of violence under R.C. 2901.01(A)(9); where defendant was convicted of a fifth-degree felony and sentenced to community control, the trial court erred in imposing a one-year term for community control violation; OVI was a “technical” violation of community control - it was a new offense that was not a felony, so under R.C. 2929.15(B)(1)(c)(i), it was subject to the 90-day limit on prison terms for community control violations.

108472	DOMESTIC RELATIONS	F	CIVIL C.P.-JUV, DOM, PROBATE
STACI ANN BECHER v GARY BECHER			

Reversed and remanded.

Mary J. Boyle, P.J., and Eileen A. Gallagher, J., concur; Michelle J. Sheehan, J., concurs in judgment only.

KEY WORDS: *Civ.R. 53; magistrate’s decision; rubber stamp.*

Magistrate can only issue magistrate’s orders or magistrate’s decisions, not judgment entries. Thus, the trial court abused its discretion and violated Civ.R. 53 by signing a judgment entry that was also signed by the magistrate on a matter that the trial court had previously referred to the magistrate. The single judgment entry signed by both the magistrate and the trial court was indicative of the trial court simply rubber stamping the magistrate’s decision, which is prohibited by Civ.R. 53.

108494	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DAVID FISHER, IV			

Affirmed.

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

KEY WORDS: *Ineffective assistance of counsel; self-defense; exculpatory evidence.*

Fisher’s trial counsel was not ineffective for failing to call witnesses on his behalf, secure additional body-camera footage, or raise the affirmative defense of self-defense. Fisher’s argument with respect to exculpatory evidence relies on evidence outside the record, which is not properly before the court.

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108520	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v LONNIE B. THOMPSON			

108530	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v LONNIE B. THOMPSON			

Affirmed.

Eileen T. Gallagher, A.J., Mary J. Boyle, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Postrelease control; R.C. 2967.28; final, appealable order; sentencing; R.C. 2929.11; R.C. 2929.12; maximum; prison; res judicata.*

A trial court is required to impose separate terms of postrelease control for each individual offense. The trial court's sentencing entry complied with the requirements of Crim.R. 32(C), disposed of all pending matters in the underlying criminal case, and therefore, constituted a final, appealable order. Defendant's challenge to his sentence is barred by res judicata.

108525	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v TYRELL PADGETTE			

Affirmed.

Patricia Ann Blackmon, P.J., Anita Laster Mays, J., and Raymond C. Headen, J., concur.

KEY WORDS: *Admissibility of evidence; authenticity of evidence; hearsay; manifest weight of the evidence; allied offenses.*

Defendant's convictions for robbery and associated offenses affirmed. Social media evidence used to identify defendant as the perpetrator was properly authenticated. Voice identification is admissible under Evid.R. 901(A)(5). Convictions are supported by the weight of the evidence.

108528	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ANTWUAN HARRIS			

Affirmed.

Patricia Ann Blackmon, J., Mary J. Boyle, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Consecutive firearm specifications; felony sentencing; consecutive sentences; ineffective assistance of counsel.*

Defendant's nine-year prison sentence is affirmed. Sentence is not contrary to law. The trial court properly considered the statutory

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factors. The record supports the court's finding of consecutive sentences. Defense counsel was not ineffective for failing to object to consecutive sentences.

108549	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ROBERT CLEMONS			

Affirmed.

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

KEY WORDS: *Guilty plea; Crim.R. 11(C); right to jury trial; strict compliance.*

The trial court strictly complied with Crim.R. 11(C) when it advised the defendant that he had an "absolute right to go to trial" and shortly thereafter, in the context of the advisement concerning the state's burden of proof, stated that the trial would be to "a jury of 12 or a judge if you waived a jury."

108563	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
MICHAEL VINING v LOGAN CLUTCH CORP.			

Affirmed.

Patricia Ann Blackmon, P.J., Frank D. Celebrezze, Jr., J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Arbitration agreement; waiver; scope.*

The trial court abused its discretion in determining that the defendants waived their right to arbitration, but the trial court properly found that the parties' dispute, that concerned proprietary business information or assets, was outside the scope of the binding arbitration provision.

108586	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE M.M.			

Reversed and remanded.

Patricia Ann Blackmon, P.J., Anita Laster Mays, J., and Raymond C. Headen, J., concur.

KEY WORDS: *Legal custody; Juv.R. 40(D); objections to magistrate's decision; transcript; abuse of discretion.*

The trial court abused its discretion in failing to conduct an independent review of the record before approving the magistrate's decision.

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108606	SHAKER HTS. MUNI.	G	CIVIL MUNI. & CITY
GALEN DAVIS, ET AL. v SOBRINA WESOLOWSKI, ET AL.			

Affirmed.

Mary Eileen Kilbane, J., Larry A. Jones, Sr., P.J., and Raymond Headen, J., concur.

KEY WORDS: *Attorney fees, security deposit, R.C. 5321.16, statutory damages, rent, landlord, tenant, record, presumption of regularity.*

In this landlord-tenant dispute, the tenants deposited their rent in escrow with the clerk of court alleging a breach of habitability. The tenants then vacated the premises; the landlords sued for rent disbursement and decided to withhold the return of the security deposit until the resolution of that case. The trial court found that there was no breach of habitability, but that the landlords should have released the security deposit. The tenants' were awarded the security deposit, statutory fees, but no attorney fees.

On appeal, the tenants argued that attorney fees were mandatory, but failed to include a record for our review. As a result, we presumed regularity and affirmed the trial court. The landlords cross-appealed arguing that the security deposit was properly withheld. We found that rent deposited with the clerk of court constitutes rent and that the security deposit should have been returned following the tenants' vacating the premises.

108671	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JOHN BRAGG			

Judgment reversed and sentence modified.

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

KEY WORDS: *"Motion to Correct a Facially Illegal Sentence"; void sentence; remedy.*

The trial court's judgment denying appellant Bragg's Motion to Correct an Illegal Sentence is reversed, and the case is remanded with instructions for the trial court to issue a sentencing entry reflecting Bragg's sentence as modified.

108679	PROBATE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE ADOPTION OF J.J.P.			

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Affirmed.

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

KEY WORDS: *Consent to adoption; R.C. 3107.06(A); R.C. 3107.07(A); clear and convincing evidence; failure to provide maintenance and support; without justifiable cause.*

Probate court did not err in finding that petitioners had met their burden of proving by clear and convincing evidence that mother lacked justifiable cause for her failure to support her biological child under R.C. 3107.07(A). As such, her consent to the adoption of the child was not required under R.C. 3107.06(A). Mother did not claim that she lacked the financial ability or resources to support the child and although there was evidence that petitioners had impeded mother from having contact with the child, there was no evidence that mother was prevented from providing financial support for the child or had ever made an attempt to provide support for the child during the period in question.