

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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February 28, 2019

**106658** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: J.H., ET AL.

Affirmed in part; reversed and remanded in part.

Larry A. Jones, Sr., J., Mary Eileen Kilbane, A.J., and Frank D. Celebreeze, Jr., J., concur.

**KEY WORDS:** *Manifest weight; best interest of the children; restrictive visitation; abuse of discretion; removal of guardian ad litem.*

*Under the guidelines of R.C. 2151.281 and Juv.R. 4, Mother was not entitled to a GAL, and the outcome of the proceeding was not based solely on GAL representation for Mother. Mother participated during the hearing, competently testifying, presenting her concerns, and responding to the custodian's testimony.*

*It was properly determined that it was not in the best interest of the children to change custody.*

*It was not an abuse of discretion for the trial court to limited Mother's visitation with one child so that she had no visitation at all.*

*It was an abuse of discretion for the trial court to not allow the two children to visit and bond with one another.*

**106742** CLEVELAND MUNI. C CRIMINAL MUNI. & CITY  
CITY OF CLEVELAND v ANTHONY NORMAN

Reversed.

Kathleen Ann Keough, J., Larry A. Jones, Sr., P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Sufficiency of evidence; resisting arrest; R.C. 2921.33(A); lawful arrest.*

*Because the evidence demonstrated that the defendant was not under arrest when he allegedly struck a highway patrol trooper in the chest, and that he did not engage in any physical activity to prevent or delay his arrest, the state failed to prove essential elements of the offense of resisting arrest, and the evidence was therefore insufficient to support the defendant's conviction for resisting arrest under R.C. 2921.33(A).*

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<b>107058</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v GAIL HILL			

Affirmed.

Patricia Ann Blackmon, J., Eileen T. Gallagher, P.J., concurs; Kathleen Ann Keough, J., concurs in judgment only.

**KEY WORDS:** *Crim.R. 29; theft; manifest weight; R.C. 2929.11 and 2929.12; allied offenses.*

*State presented sufficient evidence establishing defendant as the suspect; state presented sufficient evidence of theft as complaining witness was the manager of the service station whose funds were taken; sufficient evidence supported conviction for theft of a dangerous drug under R.C. 4729.01 and 3719.01; theft and criminal damaging convictions were not against manifest weight of the evidence; maximum and consecutive sentences were not unlawful; theft of car, and thefts from trunk and glove box were not allied offenses of similar import.*

<b>107090</b>	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
WYTONYA DEFREEZE v XAIVER LYNCH			

Affirmed.

Patricia Ann Blackmon, J., Eileen T. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Landlord-Tenant; negligent maintenance; retaliatory eviction; new trial; judgment notwithstanding the verdict.*

*Although plaintiff provided undated photographs of missing and displaced rubber stair treads, defense verdict was not against the manifest weight of the evidence where landlord and his repairman testified that the stairs were in good condition, another stairway was available, plaintiff stepped in the dark, and plaintiff's husband admitted that he removed the treads after his wife's injury; claim of retaliatory eviction was properly rejected by the jury where evidence indicated that eviction was due to nonpayment of rent; although landlord was found in contempt for failing to appear on original trial date, plaintiff was not entitled to a new trial because she did not show that it was probable that his trial testimony was false.*

<b>107114</b>	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
DEMETRIUS MOORE v STATE OF OHIO			

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Affirmed.

Mary Eileen Kilbane, A.J., Anita Laster Mays, J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Wrongful imprisonment; guilty plea later vacated because the police fabricated the charges; motion for judgment on the pleadings; Civ.R. 12(C); R.C. 2743.48(A). Judgment affirmed.*

*The General Assembly has not yet provided an wrongful-imprisonment exception for guilty pleas that are later vacated because the officers fabricated the defendant's charges. The failure to provide legal relief to individuals who were wronged under these circumstances is contrary to the intent behind the wrongful imprisonment statute. While this situation is egregious, we cannot ignore the limitations the General Assembly placed on the categories of persons who are eligible for compensation. One limitation is that the claimant cannot have pled guilty to the offense. As a result, we are bound to conclude that the defendant is not eligible, at this time, to be declared a "wrongfully imprisoned individual" and the trial court properly granted the State's motion for judgment on the pleadings.*

<b>107153</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v MARIOUS SOWELL			

Affirmed.

Kathleen Ann Keough, J., Sean C. Gallagher, P.J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Res judicata; void; repeat violent offender specification.*

*Defendant's argument that his sentence on a repeat violent offender specification was void was barred by res judicata because he did not raise the issue on direct appeal.*

<b>107168</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JOSHUA HARVEY			

Affirmed.

Raymond C. Headen, J., Mary Eileen Kilbane, A.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Agreed sentence; guilty plea; Crim.R. 11; knowing, intelligent, and voluntary; aggravated burglary; attempted aggravated murder; attempted murder; kidnapping; felonious assault.*

*Defendant's plea was knowingly, intelligently, and voluntarily entered where he was informed of the maximum potential penalties of his plea.*

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<b>107191</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v CARLOS O'CONNER			

Affirmed and remanded.

Michelle J. Sheehan, J., Eileen T. Gallagher, P.J., and Patricia Ann Blackmon, J., concur.

**KEY WORDS:** *Consecutive sentences; findings; R.C. 2929.14(C)(4).*

*The trial court made the appropriate consecutive sentence findings and engaged in the analysis required under R.C. 2929.14(C)(4). However, although the trial court made the R.C. 2929.14(C)(4)(c) findings at sentencing, its sentencing entry erroneously recited the language under R.C. 2929.14(C)(4)(b). Accordingly, the matter is remanded to the trial court to issue a new sentencing journal entry nunc pro tunc, to incorporate the statutory findings made at sentencing, including R.C. 2929.14(C)(4)(c).*

<b>107194</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JASMINE M. SEARS			

Dismissed.

Raymond C. Headen, J., Mary Eileen Kilbane, A.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Misdemeanor; guilty plea; voluntarily completed sentence; moot.*

*Where the defendant voluntarily completed her misdemeanor sentence, her appeal challenging the sentence is moot.*

<b>107215</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v THEODORE RUSSELL			

Affirmed.

Sean C. Gallagher, P.J., Larry A. Jones, Sr., J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Crim.R. 11; appellate sentencing review; guilty plea.*

*The four-year sentence imposed on a second-degree felony is not clearly and convincingly unsupported by the record, and the trial court complied with the requirements set forth in Crim.R. 11.*

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<b>107227</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v QIASA PRICE			

Dismissed.

Mary Eileen Kilbane, A.J., Mary J. Boyle, J., and Raymond C. Headen, J., concur.

**KEY WORDS:** *Appeal moot.*

*Where a defendant, convicted of a criminal offense, has voluntarily paid the fine or completed the sentence for that offense, an appeal is moot when no evidence is offered from which an inference can be drawn that the defendant will suffer some collateral disability or loss of civil rights from such judgment or conviction.*

<b>107233</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JOHN MILLS, JR.			

Affirmed in part, reversed in part, and remanded.

Mary J. Boyle, J., Mary Eileen Kilbane, A.J., and Raymond C. Headen, J., concur.

**KEY WORDS:** *Sufficiency of evidence, manifest weight of the evidence, restitution.*

*The defendant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. The trial court's order for restitution was improper as it included amounts for the victim's new security system and locks.*

<b>107269</b>	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE: K.Z.			

Affirmed.

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

**KEY WORDS:** *Motion to modify temporary custody to permanent custody; termination of parental rights; R.C. 2151.414, 2151.415(D)(1); motion to extend temporary custody; Sup.R. 48; Juv.Loc.R. 18(G); guardian ad litem's investigation and report; clear and convincing evidence; medically fragile child; best interest of the child.*

*Juvenile court did not abuse its discretion in denying mother's motion to strike guardian ad litem's report and recommendation where mother's counsel had the opportunity to cross-examine guardian ad litem regarding his investigation and report and guardian ad litem's report and recommendation was just one of the*

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factors juvenile court considered in determining whether to grant permanent custody to agency. Juvenile court did not abuse its discretion in granting agency's motion for permanent custody and denying mother's motion to extend temporary custody. Competent, credible, clear and convincing evidence supported the juvenile court's determination that award of permanent custody to agency was in the best interest of the child where although mother made substantial progress on the elements of her case plan related to drug abuse, she made no significant progress towards meeting basic needs of her medically fragile child, including securing and maintaining appropriate housing for child, attending child's medical appointments and becoming knowledgeable about child's medical care and treatment.

<b>107379</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v TAE MON L. ROUSE			

Affirmed.

Eileen T. Gallagher, P.J., Patricia Ann Blackmon, J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Sentencing; purposes and principles of felony sentencing; seriousness and recidivism factors; R.C. 2929.11; R.C. 2929.12.*

*Defendant's sentence was affirmed where trial court made findings under R.C. 2929.11 and 2929.12, and the findings were supported by the record.*

<b>107452</b>	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE: M.F.			

<b>107455</b>	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN THE MATTER OF: M.F.			

Reversed and remanded.

Kathleen Ann Keough, J., Sean C. Gallagher, P.J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *R.C. 2152.18(B); confinement; hearing.*

*Trial court's judgments denying delinquent's motions to recalculate confinement credit reversed and remanded for a hearing where the trial court took no evidence before denying the motions; without evidence, trial court could not adequately determine whether the delinquent was confined at the facility and thus entitled to credit under R.C. 2152.18(B) for time served there, and the appellate court could not conduct a meaningful review.*

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<b>107622</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ERIC MASTERSON			

Reversed and remanded.

Patricia Ann Blackmon, J., Mary Eileen Kilbane, A.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Conceded error; motion to vacate postrelease control.*

*The trial court erred where it denied appellant's motion to vacate the postrelease control portion of appellant's sentence. Proper notice of postrelease control was not entered in the sentencing entry, and appellant has been released from prison.*

<b>107649</b>	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE: D.P.			

Affirmed.

Larry A. Jones, Sr., J., Patricia Ann Blackmon, P.J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *R.C. 2151.414(B)/permanent custody; best interests of the child; R.C. 2151.281/guardian ad litem/appointment of counsel; manifest weight.*

*Where it was determined that the child lacked the level of maturity necessary to make such a decision of importance and there was no overt conflict between the recommendations of the GAL and the wishes of the child, the trial court did not error in denying the mother's request for counsel separate from the GAL.*

*After conducting a best interest analysis and considering all mitigating factors, the trial court's termination of parental rights and award of permanent custody to CCDCFS was proper.*