

CASE DECISION LIST

January 16, 2020

108081 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
KAREN RIMMER v CITIFINANCIAL, INC.

Affirmed.

Michelle J. Sheehan, J., Larry A. Jones, Sr., P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *R.C. 5301.36; satisfaction of mortgage; class action certification; class definition; arbitration agreement.*

Appellant class representative claims the arbitration agreements contained in the mortgage agreements are not valid and do not warrant exclusions of potential class members from the class unless signed arbitration agreements were produced by appellee bank. While a claim regarding the enforceability of the arbitration agreement could be raised by those individuals subject to an arbitration agreement in their own actions against appellee bank, the instant class action concerned the class of mortgagors who did not have an arbitration agreement in their mortgage agreements, as set forth in the class definition. Thus, whether appellee bank must prove the validity of an agreement to arbitrate by producing a separately signed arbitration agreement is not pertinent for this certified class. Conceivably, appellant could have proposed a class definition to incorporate the requirement that individuals with an arbitration agreement in their mortgage agreement can only be excluded from the class by a proof of a separately signed arbitration agreement. However, the class as defined does not incorporate this requirement. In addition, the trial court concluded appellee bank complied with prior discovery requests and previously made relevant mortgagor files available for inspection. Therefore, appellant's claim that appellee bank must produce evidence of a separately signed arbitration agreement in order to exclude the mortgagors whose mortgage agreements contained an arbitration agreement lacks merit.

108245 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JEZEEL PEREZ

Affirmed.

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

KEY WORDS: *Ineffective assistance of counsel, trial strategy, jury instruction, affirmative defense, parental discipline, plain error.*

Appellant has not demonstrated that he was denied the effective assistance of counsel when defense counsel failed to assert the affirmative defense of parental discipline and request the corresponding jury instruction. We find the challenged actions are

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nothing more than the product of sound trial strategy that fall squarely within the wide range of reasonable professional assistance. Additionally, we cannot find that trial counsel was ineffective for not requesting a jury instruction that was inappropriate in regards to the evidence presented to the jury and an accurate statement of law. The trial court did not commit plain error by failing to give the jury instructions regarding the affirmative defense of parental discipline. A trial court does not err in failing to instruct the jury on an affirmative defense where the evidence is insufficient to support the instruction.

108248 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JUSTIN JARMON

Affirmed.

Patricia Ann Blackmon, P.J.; Anita Laster Mays, J., concurs; Larry A. Jones, Sr., J., concurs in judgment only.

KEY WORDS: *Crim.R. 43(A); defendant's right to be present; resentencing; harmless error.*

The court's failure to hold a sentencing hearing that the defendant had a right to be present was harmless error. Defendant failed to argue any prejudice on appeal, and his prison sentence was, in fact, reduced on remand.

108250 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RONDELL L. HILL

Affirmed.

Raymond C. Headen, J., Sean C. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Motion for leave to file a delayed motion for new trial; Crim.R. 33; newly discovered evidence; unavoidably prevented; unreasonable delay; reasonable diligence; res judicata; and hearing on motion for leave.*

The trial court did not abuse its discretion when it denied defendant-appellant's motion for leave to file a delayed motion for new trial because the court found, by clear and convincing evidence, that (1) the affidavit of Taylor was not timely brought to the court's attention, (2) there was no evidence that defendant-appellant was unavoidably delayed from obtaining Potts's and McCollum's affidavits, and (3) McCollum's affidavit was barred by res judicata. Further, it was within the trial court's discretion to not hold a hearing on defendant-appellant's motion for leave.

Because the trial court denied defendant-appellant's motion for

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leave to file a delayed motion for new trial, the court could not rule on defendant-appellant's motion for new trial. The merits of a motion for new trial are decided after the trial court grants movant leave to file a delayed motion for new trial.

Where this court determined in a prior appeal that defendant-appellant was not unavoidably prevented from filing his motion for new trial - based upon an alleged Brady violation - res judicata barred him from raising this issue in a subsequent appeal.

108270	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v D'ANGELO JAMAR TYUS			

Affirmed.

Sean C. Gallagher, P.J., Frank D. Celebrezze, Jr., J., and Raymond C. Headen, J., concur.

KEY WORDS: *Jury instructions; sufficiency of the evidence; court costs; itemization of costs.*

There is no error: (1) the conviction for robbery was based on sufficient evidence of the physical harm being inflicted during the commission of the theft offense or the attempted commission of a theft offense; (2) the jury instructions properly set forth the law with respect to the elements of robbery; and (3) the record does not contain the itemization of court costs nor has the trial court determined whether certain itemized costs were warranted in this particular case.

108271	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v TY'JUAN PHILPOT			

108272	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v TY'JUAN PHILPOT			

108373	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v TY'JUAN PHILPOT			

Affirmed in part; vacated in part; remanded.

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

KEY WORDS: *Findings for the imposition of consecutive sentences; R.C. 2929.14(C)(4); jail-time credit; R.C. 2967.191; discretionary bindover; R.C. 2152.10(B); R.C. 2152.12(B)(3).*

Imposition of consecutive sentences was contrary to law where (1) no findings were made at a sentencing hearing in support of trial court's decision to run three 36-month sentences consecutively; (2) a trial judge who was not assigned to the case stated at a

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sentencing hearing that the three 36-month sentences would be served consecutively based upon the assigned judge's prior representations that consecutive sentences would be imposed; and (3) the assigned judge issued sentencing journal entries setting forth findings in support of the imposition of consecutive sentences even though he did not make any of the requisite findings at the sentencing hearing. Consecutive sentences are not properly imposed where one trial judge attempts to memorialize consecutive sentencing findings made by another trial judge in a sentencing journal entry.

State did not dispute that trial court failed to properly calculate defendant's jail-time credit.

Juvenile court complied with its obligations under R.C. 2151.12(B)(3) in transferring case to the general division as a discretionary bindover.

Trial court's imposition of consecutive sentences and calculation of jail-time credit vacated and cases remanded for the trial court to (1) consider whether consecutive sentences are appropriate under R.C. 2929.14(C)(4) and if so, to make all of the required findings on the record and incorporate those findings in its sentencing journal entries and (2) recalculate the amount of jail-time credit to which defendant is entitled under R.C. 2967.191.

108276 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v AARON LINDSAY, JR.

Affirmed.

Mary J. Boyle, P.J., Frank D. Celebrezze, Jr., J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Jointly recommended sentencing range; agreed sentence; R.C. 2953.08(D)(1).*

Defendant's sentence was not reviewable on appeal under R.C. 2953.08(D)(1) because he agreed to a sentencing range as part of his plea and the trial court sentenced him within that range.

108292 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MIDFIRST BANK v GERALD A. SPENCER, ET AL.

Affirmed.

Raymond C. Headen, J., Sean C. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Foreclosure; mortgage; indorsement; competent and credible evidence; Civ.R. 12(B)(6); fraud; Fair Debt Collections Practices Act; counterclaim; jury trial.*

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(Case 108292 continued)

The trial court's foreclosure judgment was supported by competent and credible evidence. The trial court properly dismissed defendants' FDCPA counterclaim pursuant to Civ.R. 12(B)(6) because defendants failed to show that the alleged misrepresentations were directed at them or that they justifiably relied on these misrepresentations to their detriment. The trial court did not abuse its discretion in holding a bench trial.

108301 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTONIO BAKER

Affirmed in part; vacated in part; remanded.

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

KEY WORDS: *Crim.R. 11(C)(2)(a); Tier III sex offender classification; substantial compliance; complete failure to comply; merger of allied offenses; R.C. 2929.14(C)(4); imposition of consecutive sentences.*

In Cuyahoga C.P. 611863, defendant's guilty plea to rape count was invalid where trial court failed to comply with Crim.R. 11(C)(2)(a) as it related to defendant's status as a Tier III sex offender. Considering the totality of the circumstances, trial court did not substantially comply, and completely failed to comply with Crim.R. 11(C)(2)(a), where prior to the entry of defendant's guilty plea, trial court failed to inform defendant that by pleading guilty to the rape count he would be classified as a Tier III sex offender and, based on that classification, would be subject to various requirements and restrictions. Trial court erred in sentencing defendant on felonious assault count that was found to have merged with a kidnapping count. Trial court erred in imposing consecutive sentences without making the findings required for the imposition of consecutive sentences under R.C. 2929.14(C)(4) at the sentencing hearing. In Cuyahoga C.P. 611863, defendant's guilty plea to the rape count and the sentence imposed on the felonious assault count vacated and case remand for further proceedings on rape count. Trial court's imposition of consecutive sentences vacated and cases remanded for trial court to consider whether consecutive sentences are appropriate under R.C. 2929.14(C)(4) and if so, to (1) make all of the required findings on the record and (2) incorporate those findings in its sentencing journal entries.

108303 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
J. M. v D. H.

Affirmed.

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

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(Case 108303 continued)

KEY WORDS: Domestic-violence civil protection order; expired; collateral consequences; competent, credible evidence; menacing by stalking; R.C. 3113.31; R.C. 2903.211.

Affirmed the trial court's issuance of a domestic-violence civil protection order. Although the order had expired, the appeal was not moot because the collateral-consequences exception to the mootness doctrine applied in this particular case. The trial court engaged in the appropriate analysis, and there was competent, credible evidence supporting the trial court's determination that appellant's actions constituted domestic violence as defined in R.C. 3113.31, specifically a violation of R.C. 2903.211, menacing by stalking.

108502 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE M. F.

108503 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE M.F.

Reversed and remanded.

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

KEY WORDS: Confinement; R.C. 2152.18; credit for confinement; secure facility; detention.

The trial court erred by applying the wrong standard in ruling upon appellant's motions for credit for confinement. The trial court should have applied the standard set forth in R.C. 2152.18.

108542 GARFIELD HTS. MUNI. G CIVIL MUNI. & CITY
DOUG WOODS WHAT A LOVELY HOME v LATASHA MOORE

Dismissed.

Sean C. Gallagher, P.J., Frank D. Celebrezze, Jr., J., and Raymond C. Headen, J., concur.

KEY WORDS: Contempt; dismissal; right to appeal; prejudice; perjury; debtor's exam; collect; judgment; obstructed; vehicle; knowledge; magistrate's decision; objection; discretion.

Plaintiff-appellant had no right to appeal the denial of his motion for contempt because he was not prejudiced by the ruling. The trial court denied the motion for contempt upon finding the defendant's failure to disclose her ownership interest in an automobile did not obstruct the plaintiff's ability to collect on the judgment because he had knowledge of all the necessary vehicle information.

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108543 GARFIELD HTS. MUNI. G CIVIL MUNI. & CITY
DANA STALLWORTH v DOUG WOODS

Affirmed.

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

KEY WORDS: *Bias; motion to disqualify; partial transcript; motion to show cause; recovery of costs.*

The partial transcript did not support the claim that the magistrate was biased; the trial court did not abuse its discretion in dismissing show cause motion related to collection on the 2015 judgment where the movant already received all damages awarded, and most of the interest awarded, and his claim for unpaid costs included costs incurred well after the 2015 judgment.

108553 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
D.H. v J. C.

Affirmed.

Frank D. Celebrezze, Jr., J., Mary J. Boyle, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Civil stalking protection order; R.C. 2903.214; menacing by stalking; R.C. 2903.211.*

Petitioner failed to present sufficient evidence upon which the trial court could have concluded that respondent had engaged in a pattern of conduct as required by the menacing by stalking statute. Therefore, there existed no competent, credible evidence to support each element of menacing by stalking, and the trial court did not abuse its discretion in denying petitioner's petition for a civil stalking protection order.

108575 SHAKER HTS. MUNI. C CRIMINAL MUNI. & CITY
CITY OF UNIVERSITY HEIGHTS v DEBORAH ZACCARO-HOFFMAN

Affirmed.

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

KEY WORDS: *Ineffective assistance of counsel; no contest plea; telecommunications harassment; Crim.R. 11(E); petty offense.*

Defendant's no contest plea to telecommunications harassment is affirmed. Defendant failed to show that counsel was ineffective for waiving her right to an explanation of the circumstances surrounding the offense. Defendant presented no evidence that her plea was not voluntary, knowing, and intelligent. The court

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complied with Crim.R. 11(E) in accepting defendant's no contest plea to a petty offense.

108713 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE JA.S., ET AL.

Affirmed.

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

KEY WORDS: Permanent custody; manifest weight of the evidence; clear and convincing evidence; R.C. 2151.414; best interest analysis; and R.C. 2151.414(D).

A permanent custody award in favor of the Cuyahoga County Division of Child and Family Services ("CCDCFS") was not against the manifest weight of the evidence where the juvenile court found by clear and convincing evidence that (1) the children could not and should not be placed with the parent within a reasonable time, and (2) custody with CCDCFS was in the children's best interest.