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Court of Appeals, Eighth Appellate District

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July 9, 2020

108086	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v RAYSHAUN PERKINS			

Affirmed.

Eileen A. Gallagher, J., Frank D. Celebrezze, Jr., P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Ineffective assistance of counsel; prejudicial joinder; hearsay.*

Appellant fails to establish ineffective assistance of counsel based on trial counsel's failure to seek relief from prejudicial joinder where appellant articulates no basis to conclude that the joinder was prejudicial and merely refers to "apparent" prejudice. Appellant fails to establish ineffective assistance of counsel claim based on failing to object to inadmissible hearsay where the testimony in question was not hearsay. An out-of-court statement is admissible to explain police conduct during an investigation and is not hearsay.

There is no plain error in the joinder of defendants for trial where appellant fails to demonstrate plain error on the record. Citation to nonprejudicial statements in the record as well as unsupported assertions do not demonstrate plain error.

108478	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
MUSIAL OFFICES, LTD. v COUNTY OF CUYAHOGA			

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: *Law of the case; recovery of illegally collected taxes; unjust enrichment; county; immunity; prejudgment interest; class action; class decertification; common fund; equal protection.*

Finding that the trial court had jurisdiction over claims to recover overpayment of taxes was law of the case.

Plaintiffs could not recover on unjust enrichment claim against the county even though the county unjustly retained moneys belonging to plaintiffs where the county no longer had possession of the funds.

Trial court properly denied motion to decertify class action where all requirements for class certification were maintained and no individual calculations of damages were required because the parties stipulated to each class member's damages amount.

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The trial court properly awarded prejudgment interest to plaintiffs in order to fully compensate them for their loss of money over many years of litigation.

Trial court properly ordered the county to pay the judgment on behalf of all plaintiffs' class to plaintiffs' counsel where court retained jurisdiction to ensure that all class members, including absent members, are remunerated.

Trial court properly denied plaintiffs' equal protection claim where distinction between class members and other property owners occurred because members of the plaintiffs' class challenged their property values for taxation purposes and other property owners within the county did not.

Trial court erred in dismissing plaintiffs' claim for illegally collected taxes where evidence showed that the county collected taxes in excess of the amounts authorized by law.

108510	SOUTH EUCLID MUNI.	C	CRIMINAL MUNI. & CITY
CITY OF SOUTH EUCLID v CALEB SCHUTT			

Vacated and remanded.

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

KEY WORDS: Speedy trial; toll; continuance; reasonable; record; docket; ineffective assistance; prejudice; conviction; vacate; delay; jury trial; waiver.

Defense counsel rendered ineffective assistance of counsel by failing to file a motion to dismiss on speedy trial grounds. The trial court did not expressly enumerate any reasons justifying the delay or provide information in the record to affirmatively demonstrate the reasonableness of the continuance.

108581	CLEVELAND MUNI.	C	CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v TOMIKA J. JONES-MCFARLANE			

Reversed, vacated, and remanded.

Mary Eileen Kilbane, J., Mary J. Boyle, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: R.C. 4511.194; Crim.R. 11(E); Traf.R. 10(D); Traf.R. 10(B); Crim.R. 11(B); plea bargain.

Defendant-appellant's guilty plea to traffic violation for having physical control of a vehicle while under the influence vacated, and matter reversed and remanded to the trial court for further

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consideration. Crim.R. 11(E) governed defendant-appellant's plea. The trial court failed to comply with Crim.R. 11(E) by not informing defendant-appellant of the effect of her plea, as set forth in Crim.R. 11(B).

108631 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ILLUMINATING COMPANY v FREDERICK A. BOSEMANN

Affirmed.

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

KEY WORDS: *Utility poles; depreciation; indirect costs.*

The trial court did not err by declining to subtract depreciation from the replacement cost of the utility pole or by finding that the utility company proved its indirect costs to a reasonable degree of certainty.

108715 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHARLES MCKINLEY

Reversed and remanded.

Mary J. Boyle, P.J., Frank D. Celebrezze, Jr., J., and Raymond C. Headen, J., concur.

KEY WORDS: *Motion to dismiss; preindictment delay; actual prejudice; unjustifiable delay; rape; R.C. 2907.02(A)(2); attempted rape; R.C. 2923.02 and 2907.02(A)(2); kidnapping; R.C. 2905.01(A)(4).*

The trial court erred when granted the defendant's motion to dismiss for preindictment delay because the defendant did not establish actual prejudice. Further, the trial court erred when it found that the state was negligent for not prosecuting the defendant sooner.

108736 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
JOHN CHRISTEN v CONTINENTAL ENTERPRISES LTD., ET AL.

Affirmed and remanded.

Mary Eileen Kilbane, J., Mary J. Boyle, P.J., and Sean C. Gallagher, J., concur.

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KEY WORDS: Landlords; tenant; R.C. 5321.05; R.C. 5321.16; security deposit; attorney fees; abuse of discretion.

Defendants-appellants were landlords to plaintiff-appellee. Landlords appealed from the trial court order awarding statutory attorney fees to tenant in tenant's action to recover his security deposit wrongly withheld. After a bench trial, the court ruled in favor of tenant and a separate hearing was held for reasonable attorney fees under R.C. 5321.16(C). The trial court's award was upheld. Tenant submitted expert testimony that the fees were reasonable even though they far exceeded the amount of the security deposit where landlords' problematic conduct in discovery contributed to tenant's legal fees. Tenant was also permitted to recover fees expended in connection with all the claims and counterclaims because the claims were indivisible from tenant's claim to recover his security deposit. The trial court also did not err in ordering landlord to pay the fee award to tenant's counsel rather than directly to tenant.

108793	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JAMES SMITH			

Affirmed.

Michelle J. Sheehan, J., Sean C. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: Competency; R.C. 2945.37; guilty plea; stipulate; consecutive sentence; findings; R.C. 2929.14(C); journal entry.

Where the record shows that the appellant submitted to a competency evaluation, defense counsel reviewed the competency report, and the parties stipulated to the report's findings, the appellant's competency did not preclude the trial court from making a reliable determination of the appellant's ability to enter a knowing, intelligent, and voluntary plea. The trial court made the statutorily mandated consecutive sentence findings and incorporated the findings into the journal entry. The trial court's failure to incorporate the exact language of the consecutive sentence findings made in open court into its journal entry did not constitute error.

108837	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v TYRONE MOCK			

Affirmed.

Frank D. Celebrezze, Jr., J., Mary J. Boyle, P.J., and Raymond C. Headen, J., concur.

KEY WORDS: Motion for leave to file delayed motion for a new trial;

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newly discovered evidence; abuse of discretion; Crim.R. 33(B); unavoidably prevented.

Appellant failed to demonstrate that the trial court abused its discretion in finding that appellant was not unavoidably prevented from discovering either the notes containing jury questions and the court's answers or the claimed evidence of Brady violations within the time provided by Crim.R. 33(B).

108863	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
STEFANI CRIDER v GMRI, INC., D.B.A. THE CAPITAL GRILLE, ET AL.			

Affirmed.

Patricia Ann Blackmon, P.J., Larry A. Jones, Sr., J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: Arbitration agreement; waiver; scope.

Trial court properly found that the parties' dispute was not governed by arbitration; plaintiff's claims existed independently of the employment relationship and her R.C. Chapter 4112-based claims were not subject to arbitration due to lack of sufficient evidence of assent and/or waiver.

108876	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v SHANTIL CARSON			

Reversed and vacated.

Anita Laster Mays, P.J., and Larry A. Jones, Sr., J., concur; Michelle J. Sheehan, J., concurs in judgment only.

KEY WORDS: Motion to suppress; probable cause; reasonable and articulable suspicion.

The trial court erred by denying appellant's motion to suppress the evidence obtained by the police officers when they searched appellant's vehicle without a warrant and probable cause. The officers did not possess a reasonable and articulable suspicion of criminal activity before searching the appellant's vehicle and person.

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108893	CLEVELAND MUNI.	G	CIVIL MUNI. & CITY
CITY OF CLEVELAND v ANTHONY I. WHITMORE			

Affirmed.

Frank D. Celebrezze, Jr., J., Sean C. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Motion to transfer venue; abuse of discretion; motion for summary judgment; Civ.R. 56; R.C. 715.261; notice and hearing; due process; Cleveland Codified Ordinances 3103.09(e); Cleveland Codified Ordinances 3103.09(k); nuisance; per se taking.*

Appellant failed to demonstrate that the trial court erred in determining that no genuine issues of material fact existed with regard to any of the claims in this matter. Further, the trial court did not abuse its discretion in denying appellant's motion to transfer venue or request for hearing.

108906	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DAVID PESCOLIDLO			

Affirmed.

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

KEY WORDS: *Sentence; prison; purposes and principles; felony; clearly and convincingly; abuse of discretion; contrary to law; seriousness; recidivism; mitigation; mental health.*

The trial court considered the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the sentencing factors set forth in R.C. 2929.12. Defendant's individual prison terms were not clearly and convincingly unsupported by the record. The trial court did not abuse its discretion by considering information that was relevant to the imposition of sentence in the case.

108929	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v RODERICK MASON			

109026	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v RODERICK MASON			

Affirmed.

Anita Laster Mays, P.J., Larry A. Jones, Sr., J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Motion to withdraw plea; manifest injustice; trial*

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court's jurisdiction.

The trial court did not err when it denied the appellant's motion to withdraw his plea because the appellant did not demonstrate that a manifest justice occurred. The trial court retained jurisdiction to resentence the appellant at this court's directive, and the trial court retained jurisdiction to correct its earlier mistake in sentencing the appellant to the correct postrelease control time period.

108967	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
NELL LINDSAY v CITY OF GARFIELD HEIGHTS, ET AL.			

109015	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
NELL LINDSAY v CITY OF GARFIELD HEIGHTS, ET AL.			

Affirmed and remanded.

Mary J. Boyle, P.J., Kathleen Ann Keough, J., and Raymond C. Headen, J., concur.

KEY WORDS: *Class action; automated traffic camera; standing; typicality; predominance; commonality; rigorous analysis.*

The trial court's judgment certifying the class was affirmed. The plaintiff has standing to be the class representative for two of the claims but not for four of the claims that challenged the administrative appeal process. Further, the plaintiff is an adequate class representative, the plaintiff's claims are typical of the class, there are questions of law or fact common to the class, and the common question predominate over questions affecting individual members of the class. Finally, the trial court properly conducted a rigorous analysis before certifying the class.

108986	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v TAIWAN BATISTE			

Vacated and remanded.

Larry A. Jones, Sr., J., and Kathleen Ann Keough, J., concur; Eileen T. Gallagher, A.J., concurs in judgment only.

KEY WORDS: *R.C. 2929.14, imposition of consecutive sentences.*

The record does not support the trial court's imposition of consecutive sentences.

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109023	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v MICHAEL STANSELL			

Vacated and remanded.

Larry A. Jones, Sr., J., and Mary Eileen Kilbane, J., concur; Patricia Ann Blackmon, P.J., dissents with separate opinion.

KEY WORDS: *Motion to vacate; sexual predator; sexually violent predator specifications; res judicata; unlawful sentence; R.C. 2971.01(H).*

Appellant's life-tail sentence was unlawful; therefore, appellant's appeal is not prohibited based on the doctrine of res judicata.

The amendment to R.C. Chapter 2971 has no retroactive effect on appellant. It was error where the trial court denied appellant's motion to vacate sentencing on the sexually violent predator specifications.

109039	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE J.B.			

Affirmed.

Kathleen Ann Keough, J., Patricia Ann Blackmon, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Legal custody; best interest; case plan; benefit.*

The trial court did not abuse its discretion in awarding legal custody to maternal grandfather because it was in the child's best interest. Although mother completed programs in her case plan, the record demonstrated that she did not fully benefit from them causing concern on whether she could provide a safe and stable home for the child.

109436	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v MARVIN SCOTT, III			

Affirmed.

Mary J. Boyle, P.J., Sean C. Gallagher, J., and Raymond C. Headen, J., concur.

KEY WORDS: *Final appealable order; res judicata.*

Scott's argument that the trial court improperly imposed postrelease control was barred by res judicata.