

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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June 24, 2021

109601 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CITY OF SHAKER HEIGHTS, OHIO v ERICA L. CALHOUN, ET AL.

Affirmed.

Michelle J. Sheehan, P.J., Mary Eileen Kilbane, J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Summary judgment standard of review; statute of limitations for recovery of municipal income taxes; R.C. 718.12; standing to complain of error on order affecting nonappealing party.*

The trial court properly granted summary judgment in this case where there was no material fact in dispute and the record showed that the city was entitled to judgment. Because appellant had not filed a municipal income tax return the applicable statute of limitations had not begun to run and the city was not prohibited from filing an action to recover municipal income taxes. Further, appellant could not raise as error the trial court's ruling on a nonappealing party's motion where he did not demonstrate that his rights were affected or that the judgment affected the issues presented in the motion for summary judgment.

109660 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
EARL PENN v REGIONAL TRANSIT AUTHORITY

Affirmed.

Michelle J. Sheehan, J., Sean C. Gallagher, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Political subdivision immunity; summary judgment; R.C. 2744.02(B)(2).*

RTA is immune as a public subdivision because the exception set forth in R.C. 2744.02(B)(2), which is the basis of appellant's claim for RTA's liability, does not apply under the circumstances of this case. The trial court's judgment granting summary judgment in favor of RTA is affirmed.

109719 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
GEORGE DAHER v CUYAHOGA COMMUNITY COLLEGE DISTRICT, ET AL.

Affirmed.

Mary Eileen Kilbane, J., Eileen A. Gallagher, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Malicious prosecution; intimidation; absolute immunity; judicial proceedings; R.C. 2921.03.*

Defendants who gave written and/or verbal statements to a prosecutor or grand jury have an absolute privilege for any civil litigation regarding those statements including against malicious prosecution or intimidation claims.

109949	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v T.B.			

Eileen T. Gallagher, J., and Sean C. Gallagher, P.J., concur; Kathleen Ann Keough, J., concurs in part, and concurs in judgment only in part, with separate opinion.

KEY WORDS: *Due process; appeal as of right; consecutive sentence; supported by the record; allied offenses; agreed sentencing range.*

R.C. 2953.08(D)(1) does not violate due process even though it bars appellate review of jointly recommended sentences provided due process was afforded in the trial court.

Consecutive sentences were supported by the record.

Defendant waived the issue of allied offenses by entering plea agreement that provided that none of defendant's convictions were allied offenses.

109951	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v HOWARD LAWRENCE			

Affirmed.

Emanuella D. Groves, J., Larry A. Jones, Sr., P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Motion to vacate void judgment; postconviction relief; R.C. 2953.21-23; abuse of discretion; speedy trial violation; res judicata.*

A motion to vacate a void judgment is treated as a petition for postconviction relief under R.C. 2953.21(A)(1) because it (1) is filed subsequent to a direct appeal, (2) claimed a denial of constitutional rights, (3) seeks to render the judgment void, and (4) asks for a vacation of the judgment and sentence. Thus, for the purposes of this appeal, we construe appellant's motion to vacate a void judgment as a petition for postconviction relief.

R.C. 2953.21 through 2953.23 set forth how a convicted defendant may seek to have the trial court's judgment or sentence vacated or set aside pursuant to a petition for postconviction relief. A

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defendant's petition for postconviction relief is a collateral civil attack on his or her criminal conviction. The standard for appellate review of postconviction proceedings is abuse of discretion.

Appellant's claim in the motion to vacate a void judgment, is undergirded by the allegation that his right to a speedy trial was violated. As such, we find his claim is barred by the doctrine of res judicata. In this matter, on June 19, 2013, while represented by counsel, appellant filed a pro se motion to dismiss for lack of a speedy trial. The trial court denied the motion, and appellant proceeded to trial where he was convicted.

In his direct appeal, appellant abandoned the claimed speedy trial violation. Because appellant could have raised this claim in his direct appeal, but failed to do so, res judicata precludes him from raising his speedy trial claim. Thus, a trial court may dismiss a petition based on res judicata if an issue was or should have been raised on direct appeal. As a result, the trial court did not abuse its discretion when it denied the petition for postconviction relief, albeit styled a motion to vacate a void judgment.

109996	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE S.D.T.			

Affirmed.

Mary Eileen Kilbane, J., Sean C. Gallagher, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: Legal custody; best interest; R.C. 2151.414(D); R.C. 2151.353; preponderance of the evidence; abuse of discretion.

The juvenile court's decision to adopt the magistrate's decision granting Father's motion for legal custody was supported by a preponderance of the evidence and was not an abuse of discretion where Mother had failed to complete her case plan services and Father was ready, willing, and able to care for his minor child.

110115	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v RICHARD HOUK			

Affirmed.

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

KEY WORDS: Crim.R. 32.1; postsentence motion to withdraw guilty plea; evidentiary hearing; knowing, voluntary, intelligent plea; manifest injustice; ineffective assistance of counsel; self-defense; conflict of interest; conclusory, unsubstantiated allegations.

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(Case 110115 continued)

Trial court did not abuse its discretion in denying defendant's motion to withdraw his guilty plea, filed ten years after he entered plea, without a hearing. Defendant's claims that he was denied effective assistance of counsel based on counsel's alleged statement there was no self-defense law in Ohio, a potential conflict of interest involving counsel's prior representation of the state's key witness and counsel's alleged failure to communicate with or provide discovery to defendant were unsubstantiated. Defendant did not set forth any facts in his affidavit or identify any facts in the record that suggest that a self-defense defense would have been available to defendant if he had proceeded to trial. Defendant did not present any evidence or cite any authority to indicate that a conflict of interest existed based on attorney's prior, unrelated representation of the state's witness or that defendant's waiver of any potential conflict of interest was ineffective. Defendant did not show how his alleged failure to receive discovery or to communicate more with his attorneys precluded him from entering a knowing, voluntary and intelligent guilty plea.