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Court of Appeals, Eighth Appellate District

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March 5, 2020

108321 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
WILLIAM CRUMB, ET AL. v LEAFGUARD BY BELDON, INC., ET AL.

Reversed and remanded.

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

KEY WORDS: *Slip and fall; summary judgment; duty; independent contractor; primary assumption of risk; gutter and downspout.*

Where a resident fell on an accumulation of ice allegedly caused by a gutter's downspout draining water directly onto a driveway, the trial court improperly applied the primary assumption of risk to grant summary judgment in favor of an independent contractor who installed the gutter.

108328 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ROBERT F. KORECKY

Affirmed.

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

KEY WORDS: *Guilty plea; ineffective assistance of counsel; statute of limitations.*

A plea of guilty waives the right to claim that a defendant was prejudiced by ineffective assistance of counsel, except to the extent that the ineffective assistance of counsel caused the defendant's plea to be less than knowing, intelligent, and voluntary. A trial counsel's failure to advise a defendant of the statute of limitations defense can potentially avoid the application of waiver because it may impact the voluntary nature of the plea. In this case, however, appellant's trial counsel filed a motion to dismiss and asserted the defense of the statute of limitations on appellant's behalf but appellant chose to plead guilty to a reduced charge. Appellant fails to demonstrate his plea was less than knowing or voluntary due to any perceived deficient performance by his trial counsel.

108339 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DENNIS W. PERRIEN, JR.

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Affirmed.

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

KEY WORDS: *Murder; reckless homicide; R.C. 2903.041(A); recklessness; R.C. 2901.22; negligent homicide; R.C. 2903.05(A); lesser-included offense; ineffective assistance of counsel; sufficiency; circumstantial evidence; manifest weight; accident; jury instruction; plain error.*

Appellant's reckless homicide conviction is supported by sufficient evidence and not against the manifest weight of the evidence. Although reckless homicide is a lesser-included offense of murder, negligent homicide is not. The trial court did not commit plain error in failing to provide a negligent homicide instruction to the jury. Appellant was not denied his constitutional rights to a fair trial or the effective assistance of counsel.

108353	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DAWUD D. SHABAZZ			

Affirmed.

Anita Laster Mays, P.J., Kathleen Ann Keough, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Manifest weight of the evidence, sufficiency of the evidence, R.C. 2929.12.*

By entering a guilty plea, the appellant has waived his right to present manifest weight of the evidence or sufficiency of the evidence attacks against his convictions. Additionally, the trial court complied with the R.C. 2929.12 sentencing requirements.

108423	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DIONTE PHILLIPS			

Affirmed.

Kathleen Ann Keough, J., Eileen T. Gallagher, A.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Crim.R. 11; Fifth Amendment; exact language.*

During a Crim.R. 11 plea colloquy, the trial court is not required to advise the defendant that the state cannot comment on his right not to testify during trial. The trial court must advise the defendant that he cannot be compelled to testify against himself and by pleading guilty, he waives that right. Exact language of Crim.R. 11 is not necessary as long as the record demonstrates that right was explained or referred to in a manner reasonably intelligible to the defendant.

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108434	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v HOLLY MCFEETURE			

Affirmed.

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

KEY WORDS: *Postconviction relief; hearing; substantive grounds; abuse of discretion; due process; Brady violation; possession; false testimony; credibility; res judicata.*

The trial court did not abuse its discretion in dismissing a petition for postconviction relief without a hearing. Appellant did not set forth credible operative facts to establish substantive grounds for relief where the state was not in possession of the documents and there was nothing to suggest that the state knowingly used false testimony to obtain a conviction.

108452	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ISAIAH S. MEADOWS			

Affirmed and remanded.

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

KEY WORDS: *Journalize findings; nunc pro tunc; manifest weight of the evidence; rape.*

The trial court failed to journalize the fact that it suspended Meadows's obligation to pay costs while he was incarcerated in its sentencing journal entry, which can be corrected through a nunc pro tunc entry. Meadows's conviction for rape was not against the manifest weight of the evidence.

108504	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v AIRYYON JACKSON			

Affirmed.

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

KEY WORDS: *Consecutive sentences; R.C. 2929.14(C)(4); rape; gross sexual imposition; probation; violation; findings; specific facts; evidence; support.*

Affirmed the trial court's imposition of consecutive sentences. The trial court engaged in the correct analysis and made the required

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findings; the trial court was not required to set forth specific facts causing the requisite findings to be satisfied; and the record contained evidence to support the statutory findings.

108512 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MICHAEL LARICHE

Dismissed.

Larry A. Jones, Sr., J., Eileen T. Gallagher, A.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: Anders, motion to withdraw and dismiss; consecutive sentences; findings.

On review, the record shows that the trial court made the statutorily required findings and those findings were incorporated into the trial court's sentencing judgment entry. Appellant's counsel's motion to withdraw and dismiss the appeal is well taken.

108529 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LARRY HARRIS

Affirmed.

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

KEY WORDS: Crim.R. 11; effect of the plea.

The trial court complied with Crim.R. 11, and the record shows that Harris knowingly, voluntarily, and intelligently pleaded guilty.

108535 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
BLUE TECHNOLOGIES SMART SOLUTIONS, LLC v
OHIO COLLABORATIVE LEARNING SOLUTIONS, INC., ET AL.

Affirmed.

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

KEY WORDS: Arbitration; stay; compel; waiver; abuse of discretion; R.C. 2711.02; R.C. 2711.03; knowledge; presumed; totality of circumstances; hearing; oral; request.

Affirmed the trial court's denial of defendants' motion to stay and to compel arbitration. The trial court did not abuse its discretion in finding defendants waived their right to arbitration. Defendants

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were presumed to have knowledge of the arbitration provision, and the totality of circumstances established that defendants acted inconsistently with their right to arbitration. A formal hearing was not required under R.C. 2711.03 where defendants did not request an oral hearing and the record demonstrated that the trial court did hear the parties upon the briefing submitted and by addressing the motion at a pretrial conference.

108555	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
PAULA WALTERS v KARON F. CARTER, ET AL.			

Affirmed.

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

KEY WORDS: *Motion for sanctions; R.C. 2323.51; Civ.R. 11; frivolous conduct; discrimination; telephone harassment; intentional infliction of emotional distress; eviction.*

The trial court did not err when it denied defendant-appellant's motion for sanctions to recover attorney fees under R.C. 2323.51 where a reasonable attorney would have filed the action based upon the existing law and applicable facts. Similarly, the trial court did not err when it denied the motion for sanctions, pursuant to Civ.R. 11, because the evidence supported that (1) there were good grounds to support the complaint, and (2) the complaint was not filed for purposes of delay.

108676	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v WILLIE L. BANDY			

Affirmed.

Kathleen Ann Keough, J., Eileen T. Gallagher, A.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Sentence; void; indefinite.*

The trial court's failure to include the term "indefinite" in defendant's sentence did not render his sentence void where the 15-year-to-life prison sentence was indefinite by its nature.

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108847	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JAMES WESTLEY			

Affirmed.

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

KEY WORDS: *Postsentence motion to withdraw a guilty plea; manifest injustice; ineffective assistance of counsel; res judicata.*

The trial court did not abuse its discretion in denying defendant-appellant's postsentence motion to withdraw his guilty plea and vacate his conviction where (1) res judicata barred claims that were argued or could have been argued in his prior appeal; (2) no evidence was presented to support a claim of manifest injustice due to a conspiracy among the trial judge, state's attorney, and defense counsel; and (3) no evidence was presented to show the alleged withholding of material evidence from the defendant-appellant resulted in ineffective assistance of counsel.