

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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March 30, 2023

111233 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v BRIAN KRAMER-KELLY

Reversed, vacated, and remanded.

Lisa B. Forbes, J., and Mary J. Boyle, J., concur; Anita Laster Mays, A.J., dissents.

KEY WORDS: *Joinder; severance; Crim.R. 8(A); Crim.R. 14, abuse of discretion.*

Defendant was prejudiced by single indictment leading to only one trial involving two alleged rape victims for two reasons: the jury could have improperly accumulated evidence from first victim's case to evidence from second victim's case; and the evidence from either case would be inadmissible in the other case under Evid.R. 404(B). Rape convictions reversed, sentence vacated, and case remanded.

111302 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
DENNIS DANCZAK v KARA LYNN DANCZAK

Dismissed.

Lisa B. Forbes, P.J., Mary J. Boyle, J., and Michael John Ryan, J., concur.

KEY WORDS: *Civ.R. 52; motion; findings of fact and conclusions of law; inappropriate; final appealable order; motion to modify child support; App.R. 4; time to appeal; bootstrapping.*

Appellant's Civ.R. 52 motion for findings of fact and conclusions of law was inappropriate because the trial court had issued findings of fact and conclusions of law in its January 5, 2022 journal entry. Therefore, the inappropriate Civ.R. 52 motion did not toll the time to appeal under App.R. 4. Because appellant appealed a January 5, 2022 decision of the trial court on February 18, 2022, it was not within 30 days and thus his appeal was untimely. Judgment dismissed.

111550 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
JOSEPH RIGO, ET AL. v LIBERTY MUTUAL GROUP, INC., ET AL.

Affirmed.

Mary Eileen Kilbane, J., Frank Daniel Celebrezze, III, P.J., and Kathleen Ann Keough, J., concur.

(Case 111550 continued)

KEY WORDS: App.R. 3; App.R. 16; negligence; manifest weight; jury verdict; Civ.R. 59; motion for a new trial; judicial admissions; credibility.

The jury did not lose its way in returning a verdict in favor of defendant-appellee where the plaintiff-appellant did not sustain his burden of persuasion in establishing that defendant-appellee was negligent, that plaintiff-appellant was injured as a result of such negligence, and that plaintiff-appellant was entitled to damages. The jury verdict was appropriate where plaintiff's entire case rested on his own credibility and he provided inconsistent versions of each relevant accident and his symptoms that allegedly resulted from those accidents. Appellate court is without jurisdiction to consider the trial court's denial of plaintiff-appellant's motion for a new trial where that judgment was not properly appealed from.

111558	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v ANDRE MITCHELL, SR.			

Affirmed and remanded.

Emanuella D. Groves, J., Anita Laster Mays, A.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Felony convictions; prison sentence; nunc pro tunc entry; consecutive sentence; protection order; violation of a protection order; community-control supervision; probation; presentence investigation ("PSI"), sentencing; appellate review; clear-and-convincing standard; de novo review; R.C. 2929.14; 2929.11, 2929.12; and 2953.08; consecutive sentences; public protection; criminal history; multiple offenses; courses of conduct; harm caused; evidentiary support; sentencing entry; aggregate prison sentence; mitigating circumstances; statutory range; purposes and principles of sentencing; recidivism; seriousness factors; community control.*

Judgment affirmed and remanded. R.C. 2953.08(G)(2) prescribes when a reviewing court may alter a felony sentence. A sentence is not contrary to law when it fell within the statutory range for the degree of felony and where the trial court considered the principles and purposes of sentencing pursuant to R.C. 2929.11 and 2929.12. A trial court's statement in its sentencing journal entry that it considered the required statutory factors is enough to fulfill a sentencing court's obligations under R.C. 2929.11 and 2929.12. A consecutive sentence will remain undisturbed by a reviewing court when the trial court makes the requisite findings under R.C. 2929.14(C)(4) and the record does not fail to clearly and convincingly support those findings.

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111621 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DONALD SULLIVAN

111917 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DONALD SULLIVAN

Affirmed in part; reversed in part; and remanded.

Frank Daniel Celebrezze, III, P.J., Michelle J. Sheehan, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Crim.R. 11(C); plea; knowingly, intelligently, and voluntarily made; de novo review; substantial compliance; maximum penalty; mandatory postrelease control; R.C. 2929.141; Reagan Tokes Law; required advisements; R.C. 2929.19(B)(2)(c).*

The trial court complied with Crim.R. 11 and appellant's plea was knowing, voluntary, and intelligent. However, because the trial court failed to fully notify appellant of the R.C. 2929.19(B)(2)(c) advisements, the case is remanded for resentencing solely to provide the proper advisements.

111646 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
COVENTRY COURTS, LLC v CUYAHOGA COUNTY, ET AL.

Affirmed.

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

KEY WORDS: *Unjust enrichment; fraud; political subdivision immunity; real estate taxes; illegal taxation claim; adequate remedy at law; equitable claim.*

Trial court properly granted summary judgment in favor of county on taxpayer's fraud and unjust-enrichment claims where the county was immune from liability for the fraud claim and the taxpayer had an adequate remedy at law that precluded the equitable claim of unjust enrichment.

111690 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE A.R., ET AL.

111746 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: A.R., ET AL.

Affirmed.

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

KEY WORDS: *Legal custody; best interest of a child; abuse of discretion; manifest weight of evidence.*

The juvenile court’s award of legal custody of the parents’ three children to relatives was based on competent credible evidence in the record and did not constitute an abuse of discretion where the Agency substantiated allegations of sexual abuse by father and where mother did not show she fully complied with or benefitted from services provided.

111728	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v ZAEBREON GARRISON			

Dismissed and remanded.

Kathleen Ann Keough, P.J., Emanuella D. Groves, J., and Michael John Ryan, J., concur.

KEY WORDS: *Motion to withdraw; guilty plea; Crim.R. 11(C); knowingly, voluntarily, intelligently; dismissed.*

Motion to withdraw of appellant’s counsel granted and the appeal dismissed where, after an independent review of the record pursuant to the procedures set forth in Anders v. California, the appellate court determined that the trial court complied with Crim.R. 11(C) when accepting appellant’s guilty plea, appellant’s plea was made knowingly, voluntarily, and intelligently, and there were no meritorious grounds for appeal.

111732	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JEREMY RUDOLPH			

Affirmed.

Eileen A. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Presumption of community-control sanctions; R.C. 2929.13(B)(1)(a); R.C. 2929.13(B)(1)(b)(vii); position of trust; financial investments; plain error.*

Defendant did not show that trial court committed plain error in sentencing him to a prison sentence rather than community-control sanctions. Record was sufficient to conclude that defendant held a position of trust that facilitated theft offenses. Defendant’s crimes related directly to his position as a purported financial investor, broker or advisor and were facilitated by that position. Because the application of R.C. 2929.13(B)(1)(b)(vii) was supported by the record, trial court had discretion to impose a term of imprisonment rather than community-control sanctions.

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111736 LAKEWOOD MUNI. G Civil Muni. & City
GORAN DJURIN v BRYAN P. GINLEY

Affirmed.

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

KEY WORDS: *Landlord; tenant; deposit; rent; R.C. 5321.07; escrow; distribution; magistrate's decision; objections; untimely; Civ.R. 53(D)(3)(b)(i); Civ.R. 53(D)(5); Civ.R. 53(D)(4)(c); pro se; plain error; civil; exceptional circumstances.*

Affirmed the judgment of the trial court in a landlord-tenant dispute involving rent deposited with the court pursuant to R.C. 5321.07. Pro se litigants are held to the same standard as litigants represented by counsel. Because the pro se defendant did not timely object to a magistrate's decision on the distribution of the escrowed funds, he waived any challenge except for a claim of plain error. In a civil case, plain-error review is disfavored. The defendant failed to raise plain error, and the case did not present exceptional circumstances warranting application of the plain-error doctrine.

111755 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MARCELL L. WILSON

Affirmed in part, vacated in part, and remanded.

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

KEY WORDS: *Felonious assault; improperly discharging a firearm at or into habitation; discharge of a firearm on or near prohibited premises; drive-by shooting firearm specification; peace-officer specification; sufficiency of evidence; manifest weight; Reagan Tokes Law.*

Appellant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence. However, the trial court erred in imposing a five-year drive-by shooting specification on the underlying offense of discharge of a firearm on or near prohibited premises in contravention of R.C. 2941.146(A). The case is remanded for resentencing for the sole purpose of providing appellant with the statutory notifications regarding his indefinite sentence imposed pursuant to the Reagan Tokes Law.

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111773 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v AYRAMIS RIGGINS

Affirmed.

Kathleen Ann Keough, J., Anita Laster Mays, A.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Reagan Tokes Law; indefinite sentence; constitutionality.*

Appellant's constitutional challenges to the indefinite sentencing scheme under the Reagan Tokes Law are overruled.

111780 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAMONE MIMS

Reversed in part and remanded.

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

KEY WORDS: *Felonious assault; R.C. 2903.11(A)(2); firearm specification; R.C. 2941.141(A); jail-time credit; mandatory prison term; R.C. 2929.14(B)(1)(b); judicial discretion; COVID; coronavirus; indigency; equal protection; judicial release; App.R. 5(C); R.C. 2945.67; ripeness; justiciability; jurisdiction.*

Where the defendant pleaded guilty to felonious assault with a one-year firearm specification, the trial court's application of jail-time credit to the mandatory term imposed on the specification was contrary to law under the plain language of R.C. 2929.14(B)(1)(b) and following State v. Moore, 154 Ohio St.3d 94, 2018-Ohio-3237, 111 N.E.3d 1146. However well-intentioned a trial court may be in crafting a criminal sentence, it has no discretion to impose a sentence that is contrary to law. Moreover, the Supreme Court in Moore rejected the defendant's equal-protection argument, which was essentially that he, because of his indigency, would lose jail-time credit if he were granted judicial release at the earliest opportunity where a nonindigent defendant would not.

We found the state's appeal to be ripe and determined that we have jurisdiction to consider the appeal. The defendant had argued that the appeal would only be ripe if he were granted judicial release, but the state's appeal is constitutionally and prudentially justiciable now. Finally, the fact that the trial court phrased its application of jail-time credit as a "request" does not prevent our court from having jurisdiction. The trial court made a "request" as to something that is not within the Department of Rehabilitation and Correction's discretion, since the request went to the imposition of sentence itself. Sentence reversed in part, modified to delete the trial court's application of jail-time credit to the mandatory prison term imposed on the specification.

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111794 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOEL DIAZ

Reversed and remanded.

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

KEY WORDS: *Reagan Tokes Law; constitutionality. State appealed sentence that did not impose indefinite sentence under Reagan Tokes Law.*

The trial found the Reagan Tokes Law to be unconstitutional. Pursuant to this court's decision in State v. Delvallie, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470, 185 N.E.3d 538 (en banc), the sentence imposed by the trial court is vacated and cause remanded for resentencing.

111814 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ARLANDER WILSON, III

Affirmed.

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

KEY WORDS: *Amplification; voir dire; plain error; harmless error; Crim.R. 52; hearsay; and manifest weight of the evidence.*

The trial court's amplification of the reasonable doubt standard during voir dire did not amount to plain error where the court later charged the jury with the statutory definition of the standard. The trial court's introduction of improper opinion testimony to identify the defendant amounted to harmless error. The rules of hearsay did not apply to a witness's testimony about a citation book maintained by his employer because the book was not introduced for the truth of the matter. A review of the record demonstrated that the trier of fact did not lose its way and create a manifest miscarriage of justice when it convicted defendant.

111823 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE A.B.

Dismissed in part and reversed in part.

Mary Eileen Kilbane, J., and Eileen A. Gallagher, P.J., concur; Eileen T. Gallagher, J., concurs in part and dissents in part (with separate opinion).

KEY WORDS: *Mootness; sexual offender classification; juvenile;*

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(Case 111823 continued)

abuse of discretion.

Where appellant voluntarily completed inpatient treatment and that condition of his community control was subsequently terminated, his appeal of that condition is moot. The juvenile court abused its discretion in classifying appellant as a Tier I sexual offender.

111833 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v ANDREY L. BRIDGES

Affirmed.

Eileen A. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: Motion to vacate a void judgment; R.C. 2953.21(A); R.C. 2953.23(A); petition for postconviction relief; successive petition; res judicata; motion for transcript; Civ.R. 58(B); vexatious litigator; Loc.App.R. 23(A).

Trial court did not err in denying appellant's motion to vacate a void judgment, construed as a successive petition for postconviction relief. Because appellant did not make the requisite showing under R.C. 2953.23(A)(1), the trial court lacked jurisdiction to consider his untimely, successive petition for postconviction relief. Furthermore, because appellant raised or could have raised the claims in his petition on direct appeal or in his prior petitions for postconviction relief, his claims were barred by res judicata.

Trial court did not err in denying appellant's motion for trial transcript where official trial transcripts were prepared on appellant's behalf, at the state's expense, and filed in his direct appeal; appellant was not entitled to another copy of official transcripts at the state's expense for use in his successive postconviction proceedings.

Appellant was not deprived of an opportunity to appeal the trial court's denial of his 2014 petition for postconviction relief due to the trial court's failure to comply with Civ.R. 58(B).

Appellant's repeated, continued attempts to litigate the same issues constitutes frivolous conduct pursuant to Loc.App.R. 23(A); appellant designated a vexatious litigator under Loc.App.R. 23.

111850 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
WERNER PROPERTIES, INC., ET AL. v GASEARCH, LLC, ET AL.

Affirmed.

Kathleen Ann Keough, J., Anita Laster Mays, A.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Appellate jurisdiction; subject-matter jurisdiction; exclusive jurisdiction; Public Utilities Commission of Ohio.*

The appellate court had jurisdiction to consider the appeal even though the trial court's dismissal entry did not specifically dismiss appellant's claims against the John/Jane Doe defendants because although appellant's complaint named the Doe defendants, it did not state any claims against them, the trial court's entry implicitly dismissed the claims against them, and the entry contained the requisite Civ.R. 54(B) language; the trial court properly dismissed appellant's claims against the defendants - a public utility, a natural gas supplier, and its owner - for lack of subject-matter jurisdiction because the Public Utilities Commission of Ohio had exclusive jurisdiction over appellant's service- and rate-related claims.

112041	COMMON PLEAS COURT	A	Criminal C.P.
IN RE CONTEMPT OF RUSSELL S. BENSING			

Reversed.

Sean C. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Contempt; direct; criminal; attorney; abuse of discretion; trial court; appellate court; oral argument; precedence; late; extenuating circumstances; sensibilities; administration of justice; R.C. 2705.01.*

Judgment of contempt reversed. The trial court abused its discretion in finding attorney in direct contempt when the attorney presented extenuating circumstances for appearing late and then leaving a trial court proceeding to attend an oral argument in the court of appeals, which took precedence. Although the conduct was contemptuous to the trial court's sensibilities, it did not constitute punishable, criminal contempt.