May 6, 2021

109054 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANDARI KARRON YORK

Affirmed.

Mary J. Boyle, A.J., Sean C. Gallagher, J., and Emanuella D. Groves, J., concur.

KEY WORDS: Miranda; motion to suppress statements; sufficient evidence; manifest weight of the evidence; sexual battery; R.C. 2907.03(A)(2); knowingly; substantial impairment; lesser included offense; rape; R.C. 2907.02(A)(1)(c); R.C. 2929.12.

The trial court did not err when it denied the defendant's motion to suppress because the defendant voluntarily, intelligently, and knowingly waived his Fifth Amendment rights when he executed a Miranda form. The state presented sufficient evidence based on the victim's testimony that the defendant knew that the victim's ability to appraise the nature of or control her own conduct was substantially impaired for purposes of sexual battery under R.C. 2907.03(A)(2). Likewise, the jury's verdict was not against the manifest weight of the evidence. The trial court did not err when it instructed the jury on the sexual battery because it is a lesser included offense of rape under R.C. 2907.02(A)(1)(c) and was warranted by the evidence. The trial court's sentence for sexual battery was not contrary to law because it properly considered the seriousness and recidivism factors under R.C. 2929.12.

109276 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TERRANCE FISHER

Affirmed.

Lisa B. Forbes, J.; Kathleen Ann Keough, J., concurs with majority and with separate concurring opinion; Sean C. Gallagher, P.J., concurs (with separate opinion).

KEY WORDS: Crim.R. 11; plea colloquy; substantial compliance; complete failure; maximum penalty; R.C. 2929.50; sex offender; classification; prejudice.

Appellant must demonstrate prejudice when the trial court substantially complies with the nonconstiutional rights advisements under Crim.R. 11 in order for an appellate court to vacate his plea. Here, the trial court substantially complied when it advised the appellant that by pleading guilty to sexual battery, he faced a sentence of 12 to 60 months in prison, a fine of up to $10,000, that he would be subject to mandatory postrelease control, and that he would be classified a Tier III sex offender, which would be further discussed with him at sentencing. Under the totality of the circumstances, appellant's plea was made knowingly,

(Case 109276 continued)

intelligently, and voluntarily. The appellant did not argue or demonstrate prejudice. Therefore, his plea cannot be vacated.

109490 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JONAH KETCHUM

Reversed and vacated.

Eileen A. Gallagher, J.; Mary J. Boyle, A.J., concurs with separate opinion; Sean C. Gallagher, J., dissents with separate opinion.

KEY WORDS: R.C. 2903.211; Crim.R. 7; menacing by stalking.

Where an offense requires proof that the defendant committed two or more qualifying actions or incidents closely related in time, a conviction for such an offense, based on an amended indictment that does not contemplate two such actions or incidents, constitutes reversible error.

109579 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JASON KAUFFMAN

Affirmed and remanded.

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

KEY WORDS: Robbery; R.C. 2911.02(A)(3); guilty plea; effect; actual innocence; Crim.R. 11; Crim.R. 11(C)(2)(b); prejudice; nunc pro tunc; firearm specifications.

Affirmed appellant's conviction for robbery. Appellant's guilty plea was knowingly, voluntarily, and intelligently entered. The trial court did not completely fail to comply with Crim.R. 11(C)(2)(b), the advisement regarding the effect of a guilty plea is not a constitutional requirement, and prejudice was not shown. The case was remanded to the trial court for the limited purpose issuing a nunc pro tunc entry to correct a clerical error and delete the firearm specifications from the sentencing entry.

109673 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JUAN A. SANCHEZ

Affirmed.

Mary J. Boyle, A.J., Eileen A. Gallagher, J., and Lisa B. Forbes, J., concur.

KEY WORDS: Judicial release; R.C. 2929.20; community control sanctions; medical marijuana.

The trial court did not err in revoking Sanchez's judicial release and reimposing his prison sentence. Sanchez admitted at the judicial release violation hearing that his medical marijuana use violated the conditions of his community control sanctions.

109754 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v ANGEL SERRANO

109755 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v ANGEL SERRANO

109857 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v ANGEL SERRANO

Reversed and remanded.

Mary J. Boyle, A.J., Eileen A. Gallagher, J., and Lisa B. Forbes, J., concur.

KEY WORDS: Criminal contempt; R.C. 2929.25; direct and indirect contempt; due process; notice; proof of guilt; aggravated menacing; jail credit; personal bond.

The trial court erred when it charged the defendant with criminal contempt for violating the terms of his community control sanctions because R.C. 2929.25 does not permit a trial court to do so. The trial court also erred when it found the defendant guilty of criminal contempt when it failed to give him adequate notice in one contempt case and lacked sufficient evidence of guilt beyond a reasonable doubt in the other contempt case. Further, the trial court erred when it increased the defendant's sentence and added a community control sanction in his aggravated menacing case when he did not commit a new violation of his criminal control sanctions. Finally, the trial court erred when it miscalculated the defendant's jail credit because it failed to count the days that he remained in jail because he did not post a personal bond.

109769 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RUFUS GLENN, JR.

109796 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RUFUS GLENN

109858 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RUFUS GLENN

Affirmed.

Eileen A. Gallagher, P.J., Eileen T. Gallagher, J., and Emanuella D. Groves, J., concur.

KEY WORDS: Crim.R. 32.1; motion to withdraw guilty plea; change of heart; abuse of discretion; right to counsel.

A trial court does not abuse its discretion denying a presentence motion to withdraw a guilty plea where the defendant is represented by highly competent counsel, afforded a full hearing before entering plea and given a complete hearing on his motion to withdraw where the record reflects the court gave full and fair consideration of the motion. Moreover, a defendant's mere change of heart is insufficient justification for withdrawing a guilty plea.

A defendant's Sixth Amendment right to counsel is not violated at sentencing where the record reflects that he was represented by counsel who was afforded the opportunity to speak on behalf of his client without limitation.

110144 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE

IN RE N.R.

Affirmed.

Sean C. Gallagher, P.J., Anita Laster Mays, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: Permanent custody; substance abuse; drug screens; sobriety; best interest; reasonable efforts; findings; case plan; temporary custody; manifest weight; abuse of discretion; R.C. 2151.353(A)(4); R.C. 2151.414(D)(1); R.C. 2151.414(E); R.C. 2151.419(A); R.C. 2151.412(E).

Affirmed award of permanent custody to children services agency. The juvenile court's decision was supported by competent, credible evidence in the record and was not against the manifest weight of the evidence. This was the third time in five years that the child was in the custody of the agency. Evidence showed that although Mother completed portions of the case plan, she had a history of substance abuse, failed to take drug screens to demonstrate sobriety, and failed to establish stable housing. The juvenile court did not abuse its discretion by not extending temporary custody. In awarding permanent custody, the juvenile court was not required to make reasonable-efforts findings under R.C. 2151.419(A) when reasonable-efforts findings previously were made in the predispositional order.