

**THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
April 13, 2018**

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Case Name: *State of Ohio v. Christopher A. DeVaughns*
Case No: Montgomery App. No. 27727; T.C. No. 06-CR-843
Panel: Welbaum, Donovan, Hall
Author: Jeffrey M. Welbaum
Summary: The trial court did not abuse its discretion in overruling Appellant's Crim.R. 33 motion for new trial, as the motion was untimely and Appellant failed to provide clear and convincing proof that he was unavoidably prevented from timely filing the motion. In addition, Appellant's challenge to this court's decision in one of his prior appeals is not properly before this court, as Appellant's recourse was to seek reconsideration pursuant to App.R. 26(A), or to have the decision be considered by the Supreme Court of Ohio. Affirmed.

Case Name: *State of Ohio v. DShawn Lynch*
Case No: Montgomery App. No. 27620; T.C. No. 16-CR-1195
Panel: Donovan, Froelich, Tucker
Author: Michael L. Tucker
Summary: Defendant-appellant was convicted and sentenced for murder under R.C. 2903.02(B), having a weapon while under a disability under R.C. 2923.13(A)(4), trafficking in a counterfeit controlled substance under R.C. 2925.37(B), intimidation of a witness under R.C. 2921.03, and aggravated possession of fentanyl under R.C. 2925.11(A). Defendant-appellant's appeal challenges only the murder conviction. The murder conviction is supported by the manifest weight of the evidence. Trial counsel did not provide ineffective assistance of counsel by not requesting the trial court, acting as the trier of fact, to consider finding Defendant-appellant guilty of the lesser included offense of involuntary manslaughter. The trial court, finally, did not commit plain error by finding Defendant-appellant guilty of murder instead of involuntary manslaughter. Judgment affirmed.

Case Name: *State of Ohio v. David D. Burns*
Case No: Montgomery App. No. 27374; T.C. No. 88-CR-1058
Panel: Donovan, Froelich, Tucker

Author: Michael L. Tucker
Summary: Defendant-appellant's counsel filed a brief under the authority of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967) concluding that there are no meritorious issues to present on appeal. In addition, Appellant has raised no non-frivolous issues for appellate review. After conducting an independent review of the record, consistent with our duty under *Anders*, we also find no issues with arguable merit for appeal. Affirmed.

Case Name: *State of Ohio v. Destin D. Robinson*
Case No.: Montgomery App. No. 27280; T.C. No. 16-TRC-2221-A
Panel: Welbaum, Donovan, Tucker
Author: Mary E. Donovan
Summary: Crim.R. 11 does not apply to Robinson's guilty plea for physical control, and the record reflects substantial compliance with Traf.R. 10(D). Robinson did not proclaim his innocence until after the court accepted his guilty plea and imposed sentence, and no inquiry by the court was required regarding Robinson's reasons for pleading guilty, since Robinson did not enter an *Alford* plea. Appellant's correspondence wherein he sought to withdraw his guilty plea was insufficient to invoke the jurisdiction of the trial court since he failed to properly serve the State as required by Crim.R. 49. Judgment affirmed.

Case Name: *State of Ohio v. Robert Maranger*
Case No.: Montgomery App. No. 27492; T.C. No. 15-CR-2424
Panel: Donovan, Hall, Tucker
Author: Mary E. Donovan
Summary: The trial court did not err when it overruled appellant's motion to suppress with respect to search warrants issued on September 22, 2015, November 10, 2015, November 12, 2015, and May 4, 2016. Appellant's live-in girlfriend possessed the apparent authority to allow police into appellant's residence and to take possession of appellant's computer to which the girlfriend stated everyone in the house had access. The search warrants issued for appellant's residence, computer, and motor vehicle were supported by probable cause, were not stale, and were not overbroad nor lacking in specificity. Additionally, pursuant to R.C. 2971.01(H)(2)(f), the evidence obtained from the search warrants issued and executed in Wisconsin is admissible in the instant case because it can be used to support appellant's convictions for the sexually violent predator specifications. Since none of the evidence seized as a result of the search warrants issued for appellant's cellphone and 3 x 5 binder was admitted at trial, any invalidity of those warrants is moot. Because appellant did not make incriminating statements to law enforcement from Wisconsin regarding sex offenses alleged to have

occurred, any purported *Miranda* violation is moot. Because appellant's earlier written and oral statements were obtained as a result of his sex offender treatment and not the result of a custodial interrogation, it was not necessary for parole officers to advise appellant of his *Miranda* rights. Furthermore, even if the admission of these statements was error, it was harmless and did not ultimately affect the outcome of the trial in light of the overwhelming evidence of his guilt. Judgment affirmed.

Case Name: *State of Ohio v. Pedro A. Reyes*
Case No: Clark App. No. 2017-CA-34; T.C. No. 13-CR-575A
Panel: Froelich, Hall, Tucker
Author: Jeffrey E. Froelich
Summary: *Anders* appeal. Trial court did not err in denying, without a hearing, defendant's post-sentence motion to withdraw his guilty plea. Defendant's motion was based on *State v. Gonzales*, 150 Ohio St.3d 261, 2016-Ohio-8319, 81 N.E.3d 405 (*Gonzales I*), which was vacated on reconsideration in *State v. Gonzales*, 150 Ohio St.3d 276, 2017-Ohio-777, 81 N.E.3d 419 (*Gonzales II*). No non-frivolous issues found related to defendant's motion to withdraw his guilty plea. Judgment affirmed.

Case Name: *State of Ohio v. Lee A. Gray-Mosher*
Case No: Montgomery App. No. 27605; T.C. No. 16-CR-3057
Panel: Welbaum, Donovan, Hall
Author: Michael T. Hall
Summary: The trial court did not err in overruling the appellant's suppression motion. The record reflects a knowing, intelligent, and voluntary waiver of the appellant's *Miranda* rights prior to his jailhouse interview with a detective. Nothing in the record suggests that the appellant's statements during the interview were involuntary. The appellant's seven-year prison sentence for felonious assault is not contrary to law, and the record does not clearly and convincingly fail to support it. Judgment affirmed.

Case Name: *State of Ohio v. Jerry D. Heggem*
Case No: Montgomery App. No. 27614; T.C. No. 15-CR-3677
Panel: Welbaum, Froelich, Hall
Author: Michael T. Hall
Summary: The appellant's conviction for aggravated drug possession is supported by legally sufficient evidence and is not against the manifest weight of the evidence. The trial court acted within its discretion in denying a continuance to locate a defense witness where the witness' whereabouts and the length of the required delay were unknown. Defense counsel did not provide ineffective assistance by failing to obtain personal service of a subpoena on

the missing witness. A proffer of the missing witness' testimony established that it would have been unlikely to change the result of the appellant's trial. Therefore, no prejudice resulted from the witness' absence. Judgment affirmed.

Case Name: *Joseph E. Conner, Sr. v. James A. Scott*
Case No: Montgomery App. No. 27547; T.C. Nos. 17-CVI-108W & 17-CVI-187E
Panel: Welbaum, Hall, Tucker
Author: Michael T. Hall
Summary: The record does not portray error in the trial court's dismissal of two competing small-claims complaints on the basis that the claims they asserted were required to have been raised in a prior lawsuit between the parties. Judgment affirmed.