

**THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
CASE SUMMARIES  
March 9, 2018**

These case summaries are issued for the convenience of the public, the bench, and the bar. They are a brief statement of the court's holdings and are not to be considered headnotes or syllabi. Copies of opinions are available from the particular county's clerk of courts. The full text of each opinion will be available on the Ohio Supreme Court's Website at <http://www.supremecourt.ohio.gov/rod/docs/?source=2>

**DECISION AND FINAL JUDGMENT ENTRY RENDERED FEBRUARY 12, 2018:**

Case Name: *State of Ohio v. David J. Gullatte*  
Case No: Greene App. No. 2017-CA-60; T.C. No. 15-CR-287  
Panel: Donovan, Hall, Tucker  
Author: Per Curiam  
Summary: Appellant who previously perfected a direct appeal from his conviction and sentence (that was later dismissed for failure to prosecute) cannot use App.R. 5(A) to seek a second, delayed direct appeal. Appellant cannot show "the reasons for the failure of appellant to perfect an appeal as of right," as the rule requires. Motion for delayed appeal overruled; appeal dismissed.

**OPINIONS RENDERED ON MARCH 9, 2018:**

Case Name: *State of Ohio v. Brian Hawkins*  
Case No: Montgomery App. No. 27019; T.C. No. 15-CR-1099  
Panel: Welbaum, Froelich, Hall  
Author: Jeffrey M. Welbaum  
Summary: The trial court did not err in concluding that Appellant failed to establish actual prejudice in connection with Appellees' pre-indictment delay. The trial court did not find Appellant credible, and we defer to the trial court's decision on credibility. In addition, Appellant's convictions for rape and kidnapping were supported by sufficient evidence and were not against the manifest weight of the evidence. Appellant's trial counsel also did not provide ineffective assistance of counsel, and Appellant was not deprived of due process or a fair trial. Finally, Appellee did not commit prosecutorial misconduct, and there were no errors in the trial court, meaning there is no basis for applying the cumulative error doctrine. Affirmed.

Case Name: *In The Matter Of: B.K., aka R.B.K.*  
Case No: Greene App. No. 2017-CA-32; T.C. No. D46849  
Panel: Welbaum, Donovan, Tucker  
Author: Michael L. Tucker  
Summary: The juvenile court, with one exception, did not abuse its discretion regarding commitment and other dispositional orders imposed upon the Appellant. The exception, as conceded by the State, is that the restitution order must be amended to the agreed upon restitution amount of \$900.00. Judgment affirmed, in part, reversed in part, and remanded.

Case Name: *State of Ohio v. Bryan Oglesby*  
Case No: Montgomery App. No. 27626; T.C. No. 13-CR-50  
Panel: Welbaum, Donovan, Tucker  
Author: Michael L. Tucker  
Summary: The trial court did not abuse its discretion in denying Defendant-appellant's petition for post-conviction relief filed under R.C. 2953.21. The petition was not timely filed, and Defendant-appellant failed to establish that the petition was not timely filed because he was unavoidably prevented from discovering the facts asserted in support of the petition. Judgment affirmed.

Case Name: *State of Ohio v. Troy Patterson*  
Case No: Montgomery App. No. 27423; T.C. No. 10-CR-812/1  
Panel: Welbaum, Donovan, Tucker  
Author: Michael L. Tucker  
Summary: Defendant-appellant, in 2011, pleaded guilty to one count of aggravated burglary and one count of aggravated robbery with these convictions being affirmed on direct appeal. Defendant-appellant, in March 2016, filed a motion to withdraw the guilty pleas with the trial court overruling the motion. A trial court is without jurisdiction to maintain and determine a motion to withdraw guilty pleas after the guilty pleas have been appealed and affirmed by an appellate court. Judgment affirmed.

Case Name: *State of Ohio v. Dasean Murrell*  
Case No: Montgomery App. No. 27610; T.C. No. 17-CR-1105  
Panel: Welbaum, Donovan, Tucker  
Author: Michael L. Tucker  
Summary: Defendant-appellant pleaded guilty to one count of domestic violence, a fourth degree felony under R.C. 2919.25(A) and (D)(3), with the trial court sentencing him to a prison term of twelve months. It cannot be found by clear and convincing evidence that Defendant-appellant's sentence is not supported by the record or that it is otherwise contrary to law. Judgment affirmed.

Case Name: *State of Ohio v. Robert L. Freeman, Jr.*  
Case No.: Montgomery App No. 27392; T.C. No. 15-CR-3063  
Panel: Donovan, Hall, Tucker  
Author: Mary E. Donovan  
Summary: The trial court did not abuse its discretion when it revoked appellant's community control and sentenced him to two years in prison. The evidence adduced at the revocation hearing established that appellant violated the requirements of his community control by failing to report to his probation officer upon being released from jail. Judgment affirmed.

Case Name: *State of Ohio v. David Dehart*  
Case No.: Montgomery App. Nos. 27587, 27678; T.C. Nos. 17-CR-67, 17-CR-64  
Panel: Welbaum, Donovan, Tucker  
Author: Mary E. Donovan  
Summary: The trial court's decision to disregard its promise of community control at sentencing hearing and impose consecutive twelve-month prison terms rendered appellant's guilty pleas unknowing, unintelligent, and involuntary. Appellant's remaining assignment of error is rendered moot. Judgment reversed and cause remanded for either the imposition of community control sanctions or to allow appellant to withdraw his guilty pleas. (Tucker, J., concurring.)

Case Name: *Joel Montgomery v. Greene County Sheriff's Department, et al.*  
Case No.: Greene App. No. 2017-CA-40; T.C. No. 16-CV-0645  
Panel: Welbaum, Froelich, Hall  
Author: Jeffrey E. Froelich  
Summary: Plaintiff-Appellant asserted in his complaint that the Greene County Sheriff's Office and one of its deputies had engaged in malicious prosecution and had violated his constitutional rights by persuading a third party, his neighbor, to make false claims against him. The Sheriff's Office and deputy filed a motion for summary judgment, to which they attached affidavits from the neighbor and two deputies involved in the investigation denying that they had encouraged or been encouraged by others to make false statements. Because Plaintiff-Appellant did not create a genuine issue of material fact regarding the pertinent issues, the trial court properly granted summary judgment to the Sheriff's Office and deputy. Judgment affirmed.

Case Name: *State of Ohio v. Michael A. Wood*  
Case No.: Clark App. No. 2016-CA-69; T.C. Nos. 16-CR-143, 16-CR-144  
Panel: Donovan, Froelich, Hall  
Author: Jeffrey E. Froelich  
Summary: Defendant's convictions, in two cases, of operating a vehicle under

the influence of alcohol or drugs (OVI) were supported by the evidence. In both cases, the jury found that defendant had committed five OVI offenses in the previous 20 years, enhancing the degrees of the offenses. Defendant did not present any evidence in support of his claim that some of his prior OVI convictions resulted from pleas that were “uncounseled” and “unconstitutional”; under these circumstances, the trial court did not err in preventing defense counsel from questioning a witness in this case, who did not appear to have any connection to the prior cases, about whether defendant was represented by counsel in the prior cases. Defendant was not denied the effective assistance of trial counsel, and he was not prejudiced by joinder of the two cases. Judgment affirmed. (Donovan, J., concurring.)

Case Name: *State of Ohio v. Brian L. Spencer*  
Case No: Clark App. No. 2017-CA-22; T.C. No. 17-CR-33  
Panel: Donovan, Froelich, Hall  
Author: Michael T. Hall  
Summary: The record does not clearly and convincingly fail to support the trial court’s imposition of an eleven-year prison sentence for the appellant’s involuntary-manslaughter conviction. Although the appellant pled guilty to involuntary manslaughter, the record supports a finding that he beat his six-week-old child to death. The trial court was entitled to consider these circumstances when sentencing the appellant. The trial court erred, however, in imposing an additional 735-day prison sentence as a sanction for committing a felony while on post-release control from a previous case. The record reflects that post-release control was not properly imposed in connection with the appellant’s prior burglary conviction. Because the part of appellant’s prior burglary case imposing post-release control was void, the trial court lacked authority in the present involuntary-manslaughter case to sanction the appellant for violating post-release control. Judgment affirmed in part, reversed in part, and sentence partially vacated.

Case Name: *State of Ohio v. Tracy Martin*  
Case No: Clark App. No. 2017-CA-51; T.C. No. 16-CR-626  
Panel: Donovan, Froelich, Hall  
Author: Michael T. Hall  
Summary: We find no arguable merit to this appeal under *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). The trial court complied with Crim.R. 11, and the appellant knowingly, voluntarily and intelligently entered pleas to two third-degree felonies out of four indicted charges. The trial court made the required findings to impose two thirty-month sentences consecutively for an aggregate of five years in prison. The appellant had two prior adult felonies and had

served twelve years in prison. The sentences are not clearly and convincingly unsupported by the record or contrary to law. There are no non-frivolous issues of arguable merit. Judgment affirmed.