

**THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
May 18, 2018**

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Case Name: *State of Ohio v. Michael D. Harwell*
Case No: Montgomery App. No. 27658; T.C. No. 12-CR-2367
Panel: Welbaum, Hall, Tucker
Author: Jeffrey M. Welbaum
Summary: The trial court properly imposed a five-year mandatory term of post-release control for Appellant's first-degree felony kidnapping convictions. Although the trial court failed to impose the applicable three-year mandatory term of post-release control for Appellant's felonious assault conviction, that term of post-release control is subsumed by the five-year term imposed for Appellant's kidnapping convictions, as "the period of post-release control for all of the sentences shall be the period of post-release control that expires last[.]" R.C. 2967.28(F)(4)(c). In addition, Appellant's claim that the trial court failed to merge allied offenses of similar import at sentencing was waived for appeal and barred by the doctrine of res judicata. Affirmed.

Case Name: *Rick Poirier v. Process Equipment Co. of Tipp City*
Case No: Montgomery App. No. 27697; T.C. No. 16-CV-2848
Panel: Welbaum, Donovan, Hall
Author: Jeffrey M. Welbaum
Summary: The trial court lacked jurisdiction over Appellant's action after Appellant filed a notice of dismissal under Civ.R. 41(A)(1). While the trial court had filed a summary judgment decision, the decision was interlocutory and not a final order, because the issue of attorney fees had not been resolved and the trial court had not included a Civ.R. 54(B) certification in its decision. Because the decision was interlocutory, Appellant had the ability to file a notice of dismissal. Once the notice of dismissal was filed, the action was if it had never been filed, and the trial court erred in striking the notice of dismissal. Reversed and remanded for further proceedings. (Hall, J., dissenting.)

Case Name: *State of Ohio v. Derrick Reed, Jr.*
Case No: Montgomery App. No. 27707; T.C. No. 15-CR-2792
Panel: Welbaum, Hall, Tucker
Author: Jeffrey M. Welbaum
Summary: The trial court did not abuse its discretion by denying Appellant's motion to stay the execution of court costs. The trial court rationally determined that Appellant's ability to pay court costs was limited, but not completely absent given that Appellant had been making installment payments toward the court costs owed. Affirmed.

Case Name: *State of Ohio (City of Huber Heights) v. Frank M. Payson*
Case No: Montgomery App. No. 27608; T.C. No. 17-CRB-163E
Panel: Froelich, Hall, Tucker
Author: Michael L. Tucker
Summary: The trial court prematurely determined that Huber Heights Code Section 505.11 is unconstitutionally vague. This conclusion is reached because it is possible the City can establish that Defendant-appellee violated Huber Heights Section 505.01(a) without reference to, or reliance upon, any presumption created by Section 505.11. Judgment reversed and remanded for further proceedings.

Case Name: *State of Ohio v. Muhammad I. Salahuddin*
Case No.: Greene App. No. 2017-CA-50; T.C. No. 2017-CR-222
Panel: Welbaum, Donovan, Hall
Author: Mary E. Donovan
Summary: Appellant's trial counsel did not render ineffective assistance. The record establishes that appellant's guilty pleas were knowingly, voluntarily, and intelligently made, and there is no evidence in the record that his counsel was in any way ineffective for advising him to enter guilty pleas to any of the charged offenses, specifically Count IX, aggravated possession of drugs. Judgment affirmed.

Case Name: *State of Ohio v. Javalen Wolfe*
Case No.: Montgomery App. No. 27785; T.C. No. 93-CR-556
Panel: Welbaum, Donovan, Froelich
Author: Mary E. Donovan
Summary: Because appellant's arguments were barred by res judicata, the trial court did not err when it overruled his Motion to Dismiss on Double Jeopardy Grounds without considering the merits of his motion. Judgment affirmed.

Case Name: *State of Ohio v. Andrew Melms*
Case No.: Montgomery App. No. 27685; T.C. No. 16-CR-1673
Panel: Donovan, Froelich, Tucker
Author: Mary E. Donovan
Summary: The trial court did not err in by denying a motion to dismiss Melms'

indictment for possession of fentanyl. R.C. 2925.11(B)(2)(b), which grants immunity from prosecution for minor drug possession offenses if certain conditions are met, is not unconstitutional as applied to Melms. Melms failed to demonstrate the deprivation of a protected liberty interest, the statute does not involve a suspect class or a fundamental constitutional right, and Melms' due process and equal protection arguments accordingly fail. Judgment affirmed. (Froelich, J., concurring.)

Case Name: *State of Ohio v. Dwayne D. Coleman*
Case No: Montgomery App. No. 27666; T.C. No. 17-CRB-3679
Panel: Welbaum, Donovan, Froelich
Author: Jeffrey E. Froelich
Summary: Defendant was involved in an altercation with a store security officer; when the officer attempted to bring defendant back into the store to discuss the behavior that the officer found to be suspicious, the defendant hit the officer multiple times. Trial court's finding that defendant had committed assault, and its rejection of the argument that he had acted in self-defense, were not against the manifest weight of the evidence. Judgment affirmed.

Case Name: *City of Kettering v. William J. Maston*
Case No: Montgomery App. No. 27567; T.C. No. 16-CRB-677
Panel: Donovan, Froelich, Tucker
Author: Jeffrey E. Froelich
Summary: Trial court did not err in overruling defendant's motion to suppress. The officer diligently performed tasks needed to complete the traffic stop until back-up arrived, at which time he conducted a free-air sniff by his canine partner; the stop was not unreasonably extended to conduct the canine sniff. Defendant was not in custody when he made incriminating statements. Trial court erred in allowing the State to use at trial the laboratory report of the drug analysis, pursuant to R.C. 2925.51. The State's service of a copy of the lab report on an attorney at the Public Defender's Office did not satisfy R.C. 2925.51(A) when that attorney was no longer defendant's attorney of record at the time of service. Defendant did not demonstrate ineffective assistance of counsel based on counsel's failure to renew at trial the motion to suppress defendant's statements. Judgment reversed as to possession of a controlled substance, and case remanded for further proceedings on that charge. Judgment affirmed as to possession of marijuana. (Tucker, J., concurring.)

Case Name: *State of Ohio v. Chontay Lumford*
Case No: Clark App. Nos. 2017-CA-71, 2017-CA-72;
T.C. Nos. 2017-CR-0234 & 2016-CR-0009
Panel: Welbaum, Donovan, Hall

Author:

Michael T. Hall

Summary:

The trial court's imposition of three consecutive one-year prison sentences, and an additional nine-month agreed sentence, after revoking the appellant's community control is neither contrary to law nor clearly and convincingly unsupported by the record. Judgment affirmed.