

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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August 25, 2022

110882 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOHN BRADLEY, JR.

Application granted. Vacated in part and remanded for resentencing per entry no. 556034, dated 8/25/2022.

Eileen A. Gallagher, P.J., Michelle J. Sheehan, J., and James A. Brogan, J.,* concur.

(*Sitting by assignment: James A. Brogan, J., retired, of the Second District Court of Appeals.)

KEY WORDS: *App.R. 26(B); timely application for reopening; ineffective assistance of appellate counsel; Reagan Tokes Law; improper sentence; minimum and maximum sentencing terms; R.C. 2929.14; R.C. 2929.144; notifications; R.C. 2929.19; improper notification.*

A timely application for reopening was granted where the applicant set forth a colorable claim of ineffective assistance of appellate counsel when counsel did not raise and argue the lack of proper notification given to a criminal defendant when an indefinite sentence was imposed pursuant to the Reagan Tokes Law according to R.C. 2929.19(B)(2)(c). The case was remanded so that the proper notification could be given. A claim that the trial court did not impose a proper indefinite sentence was not supported by the record and was overruled.

110992 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RICHARD PALMER, JR.

Affirmed.

Frank Daniel Celebrezze, III, J., and Anita Laster Mays, P.J., concur; Mary J. Boyle, J., concurs in judgment only.

KEY WORDS: *Domestic violence; R.C. 2919.25(A); endangering children; R.C. 2919.22(B)(1); manifest weight; jury instructions; allied offense of similar import; R.C. 2941.25(A); ineffective assistance of counsel; Crim.R. 29.*

Judgment of the trial court affirmed. Appellant's convictions of domestic violence and endangering children were supported by sufficient evidence and were not against the manifest weight of the evidence. The trial court did not err in admitting evidence that was outside of the scope of the indictment. Appellant did not point to any specific exculpatory sections of the CCDCFS's records from which error could be found. A jury instruction on parental discipline was not requested by trial counsel and further was not warranted from the evidence presented at trial. Domestic violence and endangering children were not allied offenses of similar import.

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(Case 110992 continued)

Appellant's trial counsel was not ineffective and finally, the trial court did not err in denying appellant's Crim.R. 29 motion.

111026 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAMES DOWDELL, III

Reversed and remanded.

Emanuella D. Groves, J., and Eileen A. Gallagher, J., concur; Sean C. Gallagher, A.J., dissents (with separate opinion).

KEY WORDS: Reagan Tokes Law; constitutionality.

Appellee, state of Ohio, has right to appeal sentence that did not impose indefinite sentence under the Reagan Tokes Law. The Reagan Tokes Law has been found en banc in State v. Delvallie, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470, 185 N.E.3d 536 to be constitutional. As such, we reverse appellant's sentence and remand the matter for resentencing.

111127 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MIGUEL L. HAWKINS

Reversed and remanded.

Emanuella D. Groves, J., Lisa B. Forbes, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: S.B. 201; Reagan Tokes; constitutionality; sentencing; contrary to law.

Sentence was contrary to law when the trial court found S.B. 201 unconstitutional and sentenced defendant to a definite term of imprisonment. As this court has addressed the constitutionality of S.B. 201 in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.) the case is remanded for resentencing pursuant to S.B. 201.

111147 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION v CITY OF OLMSTED FALLS

Affirmed.

Anita Laster Mays, P.J., Frank Daniel Celebrezze, III, J., and Mary J. Boyle, J., concur.

KEY WORDS: R.C. Chapter 2711; arbitration of controversies; R.C. 2711.09; affirm arbitration award; R.C. 2711.10; vacate arbitration

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(Case 111147 continued)

award; R.C. Chapter 4117; Ohio Public Employees Collective Bargaining Act; R.C. 4117.14; Ohio Adm.Code 4117-9-06; conciliation process.

Challenges to conciliation awards are governed by R.C. Chapter 2711. The failure of appellee to timely serve a copy of the prehearing conciliation position statement on the State Employment Relations Board (“SERB”) was not grounds to vacate the conciliation award. Appellant failed to pose a formal objection on the record or provide a transcript of the hearing. The statute and rule requiring the timely service of the prehearing statements on the parties and the conciliator served to facilitate due process. The parties and conciliator were timely served. The service on SERB was for depository purposes. Neither the parties, conciliator, nor SERB were prejudiced by the inadvertent technical error. Appellant failed to pose a formal objection on the record or provide a transcript of the hearing. The trial court’s judgment confirming the award was not in error.

111213	COMMON PLEAS COURT	A	Criminal C.P.
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STATE OF OHIO v RAYSEAN N. HOWARD, JR.

Affirmed.

Michelle J. Sheehan, J., Eileen A. Gallagher P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Due process; right to be present; waiver of presence; stipulation; ineffective assistance of counsel.*

Defendant’s counsel waived defendant’s presence at a scheduled hearing and stipulated to a psychiatric report that did not find defendant incompetent to stand trial. Defendant has not shown evidence of his incompetence at the time his presence was waived, and counsel stipulated to the psychiatric report. The record does not show defendant suffered prejudice by counsel’s waiver of his presence, nor has defendant shown that the outcome of the proceedings was likely to be different had he been present to object to counsel’s stipulation to the psychiatric report. Convictions affirmed.

111388	JUVENILE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
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IN RE: V.F.

Affirmed.

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

KEY WORDS: *Parental rights; permanent custody; substance abuse; cocaine; marijuana; mental health; case plan; relapse;*

(Case 111388 continued)

temporary custody; competency; R.C. 2151.414; best interest.

The juvenile court did not err in granting permanent custody of a minor child to the Cuyahoga County Division of Children and Family Services. Mother had diagnoses of mental illness. Mother tested positive for cocaine and marijuana while pregnant with the child. The child had been in the agency's uninterrupted custody since his second day of life and was doing well in his foster-to-adopt placement. Mother only visited the child sporadically even when she had an open visitation schedule, and she had only visited the child twice in the previous fourteen months before the trial. Mother did not seek mental health and substance use services until after the agency moved for permanent custody, and she did not successfully complete her substance use services. Mother tested positive for cocaine several months before the trial and had fallen out of contact with the agency.