

**THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
December 4, 2020**

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>.

Case Name: *In re: J.C. & C.J.H.*
Case No: Montgomery App. No. 28847; T.C. Case Nos. 2018-1651 & 2018-1652
Panel: Tucker, Froelich, Hall
Author: Jeffrey E. Froelich
Summary: The trial court's grant of legal custody of two children to their maternal grandfather and step-grandmother was neither against the weight of the evidence nor an abuse of discretion. The trial court did not abuse its discretion in determining that an extension of temporary custody was not in the children's best interest or in its grant of parenting time. Judgment affirmed.

Case Name: *State of Ohio v. Dalaquone L. White*
Case No: Montgomery App. No. 28338; T.C. Case No. 2018-CR-1300
Panel: Tucker, Froelich, Hall
Author: Jeffrey E. Froelich
Summary: *Anders* appeal. There are no non-frivolous issues related to the trial court's denial of appellant's motion to suppress, appellant's waiver of his right to a jury trial, the sufficiency and manifest weight of the evidence at trial, or the court's sentence. Judgment affirmed.

Case Name: *City of Centerville, Ohio v. William A. Lash, III, et al.*
Case No: Montgomery App. No. 28732; T.C. Case No. 2019-CV-4384
Panel: Donovan, Froelich, Hall
Author: Michael T. Hall
Summary: Appellant cannot attack the default judgment entered by the trial court on the basis that it did not award attorney fees as requested in the complaint and the default judgment motion. Appellant invited the alleged error by proposing the judgment entry entered by the trial court, which did not include attorney fees. Judgment affirmed.

Case Name: *State of Ohio v. Ray L. Eades*
Case No: Montgomery App. No. 28511; T.C. Case No. 2018-CR-3727
Panel: Donovan, Froelich, Hall
Author: Michael T. Hall
Summary: The record does not reflect ineffective assistance of counsel based on appellant's attorney's failure to further pursue a plea of not guilty by reason of insanity or failure to pursue withdrawal of a no-contest plea. Counsel initially helped appellant enter an insanity plea. Appellant made his own choice to withdraw the plea after he underwent a psychological evaluation and an expert found him legally sane at the time of his crimes. With regard to the no-contest plea, appellant never expressed a desire to withdraw it. When questioned by the trial court, he reaffirmed his desire to keep the plea in place. The record further reflects that appellant's no-contest plea was entered knowingly, intelligently, and voluntarily. Finally, the record does not clearly and convincingly fail to support the appellant's individual sentences or the trial court's findings in support of partially consecutive sentences. Judgment affirmed.

Case Name: *Randall Rolling, et al. v. Kings Transfer, Inc., et al.*
Case No: Montgomery App. No. 28753; T.C. Case No. 2018-CV-3722
Panel: Tucker, Froelich, Hall
Author: Michael L. Tucker
Summary: The trial court granted summary judgment in this personal injury action to each of three appellees. The trial court correctly granted summary judgment to one appellee-truck driver and his employer, because as to this truck driver, the appellant's injury was not foreseeable; thus, this driver did not owe appellant a duty of care. The trial court erred by granting summary judgment to the second appellee-truck driver, because this driver owed appellant a duty of care, and there were unresolved questions of fact concerning breach of the duty of care, proximate cause, and comparative fault. Judgment affirmed in part, reversed in part, and remanded.

Case Name: *State of Ohio v. Malcolm Fields*
Case No: Clark App. No. 2020-CA-19; T.C. Case No. 2019-CR-826
Panel: Tucker, Donovan, Welbaum
Author: Mary E. Donovan
Summary: Appellant was not denied the effective assistance of counsel when his trial attorney withdrew his motion to suppress prior to the hearing on that motion, because the record fails to establish that the motion would have been successful had it not been withdrawn. The State adduced sufficient evidence to support appellant's conviction for operating a vehicle while under the influence, and the conviction was not against the manifest weight of the evidence. The trial court's rationale for sentencing appellant to 120 days in prison in addition to

another 30 months of incarceration under the repeat offender provisions of R.C. 4511.19(G)(1)(d)(i) was not clearly and convincingly unsupported by the record. Judgment affirmed.

Case Name: *In re: G.D.B.*
Case No: Montgomery App. No. 28844; T.C. Case No. 2015-3161
Panel: Tucker, Donovan, Welbaum
Author: Mary E. Donovan
Summary: The juvenile court did not abuse its discretion in finding Father was not in contempt for failing to pay for “no-show” counseling appointments for the parties’ minor child. Mother scheduled counseling without consulting Father and failed to produce evidence of a contract requiring payment for “no-show” appointments. The juvenile court also did not abuse its discretion in finding Father was not in contempt for denying Mother parenting time. Mother was awarded parenting time pursuant to the court’s standard order, but the parties had substantially deviated from that order; accordingly, Mother did not establish that Father was in contempt for violation of the standard order. Judgment affirmed.

Case Name: *State of Ohio v. Larry Sain*
Case No: Montgomery App. No. 28720; T.C. Case No. 2019-CR-388
Panel: Donovan, Froelich, Hall
Author: Mary E. Donovan
Summary: The trial court did not err when it overruled appellant’s motion to withdraw his guilty pleas pursuant to Crim.R. 32.1. The record supports the trial court’s finding that appellant failed to set forth any evidence that would demonstrate a complete defense to the charges against him or that he was unaware of the evidence upon which he sought to rely in support of a self-defense claim. Accordingly, the trial court reasonably found that appellant did not have a sufficient reason to withdraw his pleas but merely had a change of heart. Judgment affirmed.

Case Name: *State of Ohio v. Samuel J. Scragg*
Case No: Montgomery App. No. 28785; T.C. Case Nos. 2019-CR-3629, 2019-CR-3842, 2020-CR-374
Panel: Donovan, Froelich, Hall
Author: Mary E. Donovan
Summary: The trial court considered the statutory factors in R.C. 2929.11 and R.C. 2929.12, and the individual sentences it imposed were within the statutory ranges for the offenses. Additionally, pursuant to R.C. 2929.12(A), a trial court “has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code.” The court acted within its discretion in considering the availability of

medical personnel when imposing sentence. The trial court's rationale for sentencing appellant to a state institution for 15 months was not clearly and convincingly unsupported by the record. Judgment affirmed.