

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
June 25, 2021

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: *State of Ohio v. Vincent Wright*
Case No: Montgomery App. No. 28831; T.C. Case No. 2019-CR-2281
Panel: Tucker, Welbaum, Epley
Author: Christopher B. Epley
Summary: Appellant's conviction on four counts of aggravated robbery was not against the manifest weight of the evidence. Although the prosecutor should not have elicited testimony regarding the submission, two years earlier, of a DNA sample to BCI by a different police department, the prosecutor's questions did not rise to the level of prosecutorial misconduct. Trial counsel did not render ineffective assistance by failing to file a motion to suppress, to identify an employee-witness, or to object to certain evidence at trial. No cumulative error shown. Judgment affirmed.

Case Name: *State of Ohio v. Johnnie Lee Moore*
Case No: Montgomery App. No. 28969; T.C. Case No. 2018-CR-1292
Panel: Tucker, Welbaum, Epley
Author: Christopher B. Epley
Summary: The trial court did not abuse its discretion in denying appellant's petition for postconviction relief without a hearing. Appellant did not demonstrate that his constitutional rights were violated as a result of statements regarding appellant in an email from the prosecutor to the crime lab. Judgment affirmed.

Case Name: *State of Ohio v. Gregory White*
Case No: Clark App. No. 2020-CA-56; T.C. Case Nos. 2004-CR-574, 14622 (1969), 1979-CR-262, 1989-CR-86
Panel: Tucker, Hall, Welbaum
Author: Michael T. Hall
Summary: Appellant's "Motion to Vacate Void Judgments and Sentences" was denied by the trial court. Appellant argues that he has served his entire sentence for his multiple convictions in various cases, yet he remains incarcerated; he therefore contends that he is entitled to

release from prison. The proper method by which to raise this argument was for appellant to file a petition for a writ of habeas corpus in the judicial district in which he is incarcerated. R.C. 2725.03. Appellant is not currently incarcerated in a correctional institution in Montgomery County or the Second Appellate District. Therefore, even if we were to construe his motion to vacate as a properly filed petition for a writ of habeas corpus, neither this court nor the trial court would have jurisdiction to address the merits of the petition. Judgment affirmed.

Case Name: *State of Ohio v. Shawn Albertson*
Case No: Montgomery App. No. 28722; T.C. Case No. 2018-CR-1312/1
Panel: Tucker, Welbaum, Epley
Author: Jeffrey M. Welbaum
Summary: Appellant's ineffective assistance claims alleging that his trial counsel performed deficiently at his motion to suppress hearing and jury trial lack merit because appellant failed to establish that the outcome of those proceedings would have been different but for counsel's alleged deficient performance. In addition, appellant's convictions for aggravated burglary, aggravated arson, felony murder, and aggravated robbery were supported by sufficient evidence and were not against the manifest weight of the evidence. The trial court, however, erred at sentencing by merging appellant's aggravated burglary offense with his aggravated arson and felony murder offenses. The trial court correctly merged appellant's aggravated robbery offense with the aggravated arson and felony murder offenses, and it did not err by failing to merge appellant's grand theft of a firearm offense with his aggravated burglary and aggravated robbery offenses. The trial court also did not err by imposing restitution, as the trial court properly considered appellant's present and future ability to pay restitution as required by R.C. 2929.19(B)(5). Judgment affirmed in part, reversed in part, and remanded for resentencing.

Case Name: *State of Ohio v. Gordon William Sage*
Case No: Montgomery App. Nos. 28938 and 28939; T.C. Case No. 2004-CR-1574/4
Panel: Tucker, Welbaum, Epley
Author: Jeffrey M. Welbaum
Summary: The trial court did not err by overruling appellant's various pro se motions challenging his sentence as void, as all the claims asserted in the motions were barred by the doctrine of res judicata or were otherwise unsupported by the record. The trial court also did not err by issuing a nunc pro tunc entry for purposes of amending appellant's resentencing entry to accurately reflect the trial court's resentencing decision. Judgment affirmed.

Case Name: *In re J.Y.*
Case No: Greene App. No. 2021-CA-4; T.C. Case No. N49238
Panel: Tucker, Hall, Welbaum
Author: Jeffrey M. Welbaum
Summary: The trial court did not err by terminating appellant's parental rights and granting Greene County Children Services ("GCCS") permanent custody of appellant's daughter, J.Y. When considering the record presented on appeal, there is no basis from which to conclude that it was an abuse of discretion for the trial court to find that permanent custody in favor of GCCS was in J.Y.'s best interest. Judgment affirmed.

Case Name: *Charles Simpson v. Voiture Nationale La Societe Des Quarante Hommes, et al.*
Case No: Montgomery App. No. 29016; T.C. Case No. 2020-CV-2123
Panel: Tucker, Welbaum, Epley
Author: Michael L. Tucker
Summary: The trial court granted judgment on the pleadings and dismissed with prejudice several causes of action asserted in appellant's complaint; one cause of action was dismissed without prejudice. As to the causes of action dismissed with prejudice, the trial court did not err by granting judgment on the pleadings in favor of appellees. As to the cause of action dismissed without prejudice, this court is without jurisdiction to consider this portion of appellant's appeal. Judgment affirmed.

Case Name: *Bassam Rassi, et al. v. Buckeye Title Agency, Inc.*
Case No: Montgomery App. No. 28985; T.C. Case No. 2019-CV-4288
Panel: Tucker, Welbaum, Epley
Author: Michael L. Tucker
Summary: The trial court erred in its conclusion that appellants and appellee had not entered into a contract that required appellee, a title company, to perform a title examination. Appellee's mistake caused a lien not to be paid at closing. But, since the purchase contract obligated appellants to pay off all liens on the home, as a matter of law, appellants did not suffer any damages as a result of appellee's error. Judgment affirmed.

Case Name: *Jane Doe 1, A Minor, et al. v. Greenville City Schools, et al.*
Case No: Darke App. No. 2020-CA-4; T.C. Case No. 2020-CV-239
Panel: Tucker, Hall, Epley
Author: Michael L. Tucker
Summary: The trial court erred by overruling appellants' motion to dismiss under Civ.R. 12(B)(6) as the motion related to appellees' claims against 10 unnamed employees of appellants. Appellees claims against these

defendants should have been dismissed because appellees did not satisfy the requirements of Civ.R. 15(D). Otherwise, the trial court did not err in overruling appellants' motion. Judgment affirmed in part, reversed in part, and remanded.