

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
September 25, 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: *City of Dayton v. Brandon Burke*
Case No: Montgomery App. No. 28584; T.C. Case No. 2019-CRB-1569
Panel: Donovan, Froelich, Hall
Author: Jeffrey E. Froelich
Summary: Appellant's conviction for failure to control a dog, in violation of a Dayton ordinance, was not against the manifest weight of the evidence. Judgment affirmed.

Case Name: *State of Ohio v. Alyssa Irwin-Debraux*
Case No: Montgomery App. No. 28689; T.C. Case No. 2018-CR-3580
Panel: Donovan, Froelich, Hall
Author: Michael T. Hall
Summary: *Anders* appeal. The record reveals no non-frivolous issues for review on appeal following a remand for the purpose of resentencing to address the absence of consecutive-sentencing findings. On remand, the trial court did not err in imposing consecutive sentences. The trial court held a resentencing hearing and made the requisite findings under R.C. 2929.14(C)(4). The trial court incorporated those findings into an amended judgment entry, and the record does not clearly and convincingly fail to support the trial court's findings under R.C. 2929.14(C)(4). Judgment affirmed.

Case Name: *Thomas E. Leffel v. Village of Casstown*
Case No: Miami App. No. 2020-CA-4; T.C. Case No. 2017-CV-52
Panel: Tucker, Froelich, Welbaum
Author: Jeffrey M. Welbaum
Summary: The trial court did not err in rendering summary judgment in appellee's favor. No genuine issues of material fact existed concerning appellee's claim that it adversely possessed a 66-foot right-of-way abutting appellant's property. Appellee established adverse possession of the right-of-way, which had been in use by appellee since 1968. Appellee also established that its 2011 road improvement project maintained the boundary described in

appellant's deed. In addition, no genuine issue of material fact existed regarding the boundary line between the right-of-way and appellant's parcel which would affect appellant's title to his property. Thus, no permanent encroachment or taking occurred due to the road project, and appellant was not entitled to any recovery. Judgment affirmed.

Case Name: *State of Ohio v. David E. Steen*
Case No: Darke App. No. 2019-CA-16; T.C. Case No. 2019-CR-63
Panel: Tucker, Froelich, Welbaum
Author: Jeffrey M. Welbaum
Summary: Appellant's conviction for burglary was supported by sufficient evidence and was not against the manifest weight of the evidence where the evidence established that appellant trespassed into an occupied structure by force via a broken window and/or by stealth through entry at night with the purpose to steal various items of property therein. Judgment affirmed.

Case Name: *State of Ohio v. James Delbert Nichols, Sr.*
Case No: Champaign App. No. 2020-CA-2; T.C. Case No. 2017-CR-38
Panel: Donovan, Hall, Welbaum
Author: Jeffrey M. Welbaum
Summary: The trial court did not err in denying appellant's post-sentence motion requesting jail-time credit for the time appellant spent on electronically-monitored house arrest while on bond. It is well established that electronic monitoring as a condition of bond does not constitute "confinement" for purposes of receiving jail-time credit under R.C. 2967.191. In addition, the issue raised in appellant's post-sentence motion was barred by res judicata. Judgment affirmed.

Case Name: *Troy P. Muransky v. Michael A. Miller, et al.*
Case No: Montgomery App. No. 28622; T.C. Case No. 2016-CV-380
Panel: Tucker, Froelich, Welbaum
Author: Jeffrey M. Welbaum
Summary: The trial court's order enforcing a settlement agreement in appellee's favor was not an abuse of discretion because there was competent, credible evidence in the record to support all of the trial court's findings. Judgment affirmed.

Case Name: *Wilmington Savings Fund Society FSB as Trust v. Kathleen Ann Woods, et al.*
Case No: Montgomery App. No. 28730; T.C. Case No. 2019-CV-2591
Panel: Tucker, Froelich, Welbaum
Author: Michael L. Tucker
Summary: The trial court erred by holding that appellant could not, as a matter

of law, enforce an equitable mortgage against appellees, as devisees of an interest in real property formerly owned by their deceased predecessor in interest, because an equitable mortgage is enforceable against the mortgagor and the mortgagor's heirs and devisees. Judgment reversed and remanded.

Case Name: *State of Ohio v. Richard B. Leet*
Case No: Montgomery App. No. 28670; T.C. Case No. 2019-CR-1568
Panel: Tucker, Donovan, Froelich
Author: Michael L. Tucker
Summary: Following a guilty plea, appellant was sentenced to an indefinite prison term under the Reagan Tokes Law. The Reagan Tokes Law does not violate the separation of powers doctrine or violate a defendant's procedural due process rights. Further, appellant's due process rights were not violated in this case because he understood the maximum penalty involved and the guilty plea was otherwise knowing, intelligent, and voluntary. Judgment affirmed.

Case Name: *State of Ohio/City of Oakwood v. S.D.*
Case No: Montgomery App. No. 28615; T.C. Case No. CRB1700076
Panel: Tucker, Froelich, Welbaum
Author: Michael L. Tucker
Summary: As conceded by the City of Oakwood, the trial court erred when it overruled appellant's application to seal the record of his misdemeanor conviction without conducting a hearing. Judgment reversed and remanded.

Case Name: *State of Ohio v. Ashton Hilton*
Case No: Greene App. No. 2019-CA-70; T.C. Case No. 2019-CRB-691
Panel: Donovan, Froelich, Hall
Author: Mary E. Donovan
Summary: The trial court's award of restitution related to appellant's petty theft conviction was supported by competent, credible evidence from which the court could have discerned the amount of restitution to a reasonable degree of certainty. We find no abuse of discretion. Judgment affirmed.