

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
October 29, 2021

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Case Name: *Michael E. Verbillion, et al. v. Enon Sand and Gravel, LLC*
Case No: Clark App. No. 2021-CA-1; T.C. Case No. 2018-CV-519
Panel: Tucker, Welbaum, Epley
Author: Jeffrey M. Welbaum
Summary: The trial court did not err in concluding that appellees established standing under R.C. 303.24 to bring this action. Appellees demonstrated that they would incur special damages if appellant were not required to obtain a conditional use permit before engaging in surface mining. The trial court also did not err in failing to apply res judicata to appellees' claims, based on prior federal litigation between appellant and the County Board of Commissioners. Appellees were not in privity with the parties to that action. In addition, appellees' state action was not an improper collateral attack on the prior federal case. The trial court did not err in excluding a deposition taken in the prior action; although the deponent was deceased, the requirements of Evid.R. 804(B)(1) were not met, due to the lack of privity between appellees and the parties to the prior action. Finally, appellant failed to prove that it had a prior legal non-conforming use of the property. And, on the part of the property on which a prior nonconforming use existed when zoning regulations were enacted, the former property owners abandoned or voluntarily discontinued that use. Therefore, appellant must obtain a conditional use permit to engage in surface mining. Judgment affirmed.

Case Name: *State of Ohio v. Jackie Shropshire*
Case No: Montgomery App. No. 29108; T.C. Case No. CRB2002275
Panel: Donovan, Hall, Welbaum
Author: Jeffrey M. Welbaum
Summary: Appellant's conviction for first-degree-misdemeanor assault was supported by sufficient evidence and was not against the manifest weight of the evidence. Judgment affirmed.

Case Name: *State of Ohio v. Benjie VanWinkle*
Case No: Miami App. No. 2021-CA-3; T.C. Case No. 2016-CR-66
Panel: Donovan, Hall, Welbaum
Author: Mary E. Donovan
Summary: In this appeal pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), there are no potential assignments of error having arguable merit. Any challenge to the validity of appellant's guilty pleas is barred by res judicata. Any issue regarding counsel's alleged ineffective assistance during the representation of appellant should have been filed as a petition for post-conviction relief pursuant to R.C. 2953.21, rather than a motion to withdraw guilty pleas pursuant to Crim.R. 32. In any event, even if appellant had properly filed his motion as petition for post-conviction relief, it would have been overruled as untimely because it was not filed within 365 days after the trial transcript was filed with this court in appellant's direct appeal. See R.C. 2953.21(A)(2). Additionally, appellant has failed to submit any evidence to support his claims that he received ineffective assistance of counsel in relation to his decision to plead guilty to three counts of rape. Judgment affirmed.

Case Name: *In re: J.H., L.H., C.H.*
Case No: Montgomery App. No. 29126; T.C. Case Nos. G-2015-1837-0C, 0D; G-2015-1838-0D, 0E; G-2020-2205-0B, 0C
Panel: Donovan, Hall, Welbaum
Author: Mary E. Donovan
Summary: The trial court's grant of temporary custody of Father's three sons to a children services agency was neither against the manifest weight of the evidence nor an abuse of discretion. Judgments affirmed.

Case Name: *State of Ohio v. Joelene Atkinson*
Case No: Montgomery App. No. 29076; T.C. Case No. 2020-CR-1981
Panel: Donovan, Hall, Welbaum
Author: Mary E. Donovan
Summary: The trial court did not err in overruling appellant's motion to suppress. After a valid traffic stop for no headlights and taillights, and after learning that appellant lacked a valid driver's license and that her vehicle had fictitious plates, the vehicle was lawfully towed from the "trafficway." Having been lawfully impounded, and pursuant to Sheriff's Office policy, the vehicle was subject to an inventory search, which included the locked glove box, the key to which was in appellant's possession. Since deputies had probable cause to arrest appellant, the "threat" to place her in handcuffs in order obtain the key to the glove box cannot be characterized as coercive. Judgment affirmed.

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: The trial court erred in sentencing appellant to an aggregate 34-month prison term for operating a vehicle under the influence of drugs or alcohol, in failing to specify which portion of appellant's sentence was mandatory, and in failing to properly impose post-release control. The State concedes the errors. Judgment reversed; remanded for the trial court to reduce appellant's aggregate prison term to 30 months, to notify appellant of the mandatory portion of his sentence, and for the proper imposition of post-release control.

Case Name: *State of Ohio v. Corey Kauffman*
Case No: Darke App. No. 2021-CA-5; T.C. Case No. 2020-CR-141
Panel: Donovan, Hall, Welbaum
Author: Michael T. Hall
Summary: State's appeal. The trial court erred by dismissing the indictment against appellee. The likelihood of an additional, consecutive prison term provided enough reason for prosecution to preclude dismissal. Judgment reversed and remanded.