

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
April 14, 2023

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. Dustin Melson*
Case No: Clark C.A. No. 2022-CA-53; T.C. Case No. 21-CR-0433
Panel: Tucker, Epley, Huffman
Author: Michael L. Tucker
Summary: When accepting appellant's guilty plea, the trial court adequately advised him that it was not bound by the State's sentencing recommendation despite not explicitly stating that fact. Judgment affirmed.

Case Name: *State of Ohio v. Doshie G. Bond*
Case No: Montgomery C.A. No. 29516; T.C. Case No. 2021 CR 03825
Panel: Tucker, Epley, Huffman
Author: Michael L. Tucker
Summary: Following a jury trial, appellant was convicted of felonious assault. The trial court did not err by refusing to give a jury instruction on the inferior offense of aggravated assault. The trial court did not abuse its discretion by allowing the admission of a surveillance video tape. Further, the trial court did not abuse its discretion by deciding to dismiss a female juror for sleeping but not to dismiss a male juror for sleeping; the court's investigation supported the different conclusions. The record does not demonstrate ineffective assistance of counsel. As conceded by the State, the trial court did not provide the Reagan Tokes notifications required by R.C. 2929.19(B)(2)(c), and appellant must be resentenced. Judgment affirmed in part, reversed in part, and remanded for resentencing.

Case Name: *Joseph S. Robinson v. Amy M. Robinson*
Case No: Montgomery C.A. No. 29609; T.C. Case No. 2020 DR 00138
Panel: Epley, Lewis, Huffman
Author: Mary K. Huffman
Summary: The domestic relations court did not abuse its discretion in using the date of the final hearing as the termination date for the marriage. Husband did not file a shared parenting plan, and the designation of Wife as the residential parent and legal custodian was in the

children's best interest. The trial court correctly and conservatively determined Husband's income for purposes of spousal support, child support, and allocation of marital debt, and an abuse of discretion is not demonstrated. There was no testimony regarding the tax exemptions for the children other than Wife's asking for them, and the court did not abuse its discretion in awarding the exemptions to Wife. Judgment affirmed.

Case Name: *State of Ohio v. Thomas E. Palmer*
Case No: Clark C.A. No. 2022-CA-65; T.C. Case No. 21-CR-0267
Panel: Welbaum, Epley, Huffman
Author: Mary K. Huffman
Summary: The trial court made the necessary consecutive-sentence findings under R.C. 2929.14(C)(4) in imposing sentences for vehicular assault and possession of cocaine, and those findings were supported by the record. The trial court erred in concluding that appellant's six-month jail sentence for operating a vehicle while under the influence (OVI), a misdemeanor, was required to be served consecutively to the prison sentence for vehicular assault; imposing the misdemeanor sentence consecutively was discretionary. The trial court also erred in ordering appellant to serve his jail term prior to his prison terms and in failing to properly impose jail-time credit. Judgment affirmed in part, reversed in part, and remanded for resentencing.

Case Name: *State of Ohio v. Zacary L. Fisk*
Case No: Montgomery C.A. No. 28798; T.C. Case No. 19-CR-2718
Panel: Tucker, Epley, Huffman
Author: Christopher B. Epley
Summary: The trial court erred by denying victim's restitution request outright instead of conducting a hearing to determine the appropriate amount. Judgment reversed as to restitution and remanded for further proceedings. Judgment affirmed in all other respects.

Case Name: *State of Ohio v. Larry Keeton*
Case No: Montgomery C.A. No. 29535; T.C. Case No. 2022 CRB 309
Panel: Tucker, Epley, Lewis
Author: Christopher B. Epley
Summary: The trial court abused its discretion when it ordered that appellant complete a drug and alcohol assessment and follow through with any recommended treatment as part of appellant's terms of community control for a domestic violence offense. Under the facts of this case, this condition of community control was not related to the domestic violence offense of which appellant was convicted. The trial court's judgment as to this condition of community control is vacated. In all other respects, judgment affirmed.

Case Name: *Shirlette “Peggy” C. Burks v. Dayton Public Schools Board of Education, et al.*
Case No: Montgomery C.A. No. 29583; T.C. Case No. 2022 CV 01157
Panel: Welbaum, Tucker, Lewis
Author: Ronald C. Lewis
Summary: The trial court did not abuse its discretion in denying appellant’s Civ.R. 15(A) motion for leave to amend her complaint after the complaint had already been dismissed. The trial court did not err in granting the motion to dismiss all claims against the Board of Education due to appellant’s failure to state a claim upon which relief could be granted. Judgments affirmed.

Case Name: *Wright State University v. Wright State University Chapter of the American Association of University Professors*
Case No: Greene C.A. No. 2022-CA-54; T.C. Case No. 2022 CV 0214
Panel: Welbaum, Epley, Lewis
Author: Jeffrey M. Welbaum
Summary: The trial court erred in denying the university’s motion to vacate an arbitrator’s award. The union’s demand for arbitration was made outside of the 30-day period allowed by the parties’ collective bargaining agreement, and the arbitrator accordingly lacked jurisdiction to proceed with arbitration. Even if the Chapter had established jurisdiction, the arbitrator improperly substituted his judgment for that of the university where the university’s judgment and actions did not violate the provisions of the collective bargaining agreement. Judgment reversed; arbitration award vacated.

DECISION AND FINAL JUDGMENT ENTRY RENDERED APRIL 7, 2023

Case Name: *State of Ohio ex rel Charles J. Simpson and Huber Heights Veterans Club, Inc. v. Hon. Kimberly A. Melnick*
Case No. Montgomery C.A. No. 29554
Panel: Welbaum, Tucker, Epley
Author: Per Curiam
Summary: Relator cannot prove any set of facts establishing his clear legal right to a jury trial in contempt proceedings pending before the respondent. Because the respondent has found relator guilty of contempt, he has an adequate remedy of law by way of appeal to challenge the denial of his claimed right to a jury trial. Writs of mandamus and prohibition denied.