

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
April 26, 2024

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Case Name: *State of Ohio v. Ronald D. Fulcher Jr.*
Case No: Greene C.A. No. 2023-CA-31; T.C. Case No. 2021CR0209
Panel: Epley, Welbaum, Tucker
Author: Jeffrey M. Welbaum
Summary: The Adult Use Cannabis Control statute, codified in R.C. Chap. 3780 due to Ohio voters' passage of an initiative petition, cannot be retroactively applied to conduct that occurred before its effective date. There is no language in the statute that expressly makes it retroactive. Appellant's trial counsel did not render ineffective assistance by failing to argue that appellant's statements should have been suppressed. The trial court also did not err in denying appellant's motion to suppress. Finally, the original trial judge did not err in ruling on appellant's suppression motion and later recusing himself. Judgment affirmed.

Case Name: *State of Ohio v. Robert E. Hurley*
Case No: Greene C.A. No. 2023-CA-28; T.C. Case No. 2021CR0143
Panel: Epley, Welbaum, Tucker
Author: Michael L. Tucker
Summary: The trial court did not err in its award of jail-time credit. Appellant was not entitled to jail-time credit for time he served in prison on an unrelated case. The trial court erred, however, in imposing a consecutive sentence upon revoking appellant's community control. The trial court lacked authority to order consecutive service because it did not notify appellant of that possibility when placing him on community control. Judgment affirmed in part, reversed in part, and remanded for imposition of a concurrent sentence.

Case Name: *RSS WFCM2019-C50 - OH WG2, LLC, by and through its special servicer Rialto Capital Advisors, LLC v. Welcome Group 2 LLC, et al.*
Case No: Montgomery C.A. No. 29869; T.C. Case No. 2021 CV 05237
Panel: Epley, Tucker, Huffman
Author: Michael L. Tucker
Summary: Appellant-borrower was in default on a loan secured by several hotel properties it owned. The trial court granted appellee-lender's request to appoint a receiver to manage the hotels. Considering R.C. 2735.01(A)(2)(b), appellee's default, and appellee's consent in the mortgage to appointment of a receiver, the trial court did not abuse its discretion by appointing a receiver. Judgment affirmed.

Case Name: *In re: P.M.A.*
Case No: Montgomery C.A. No. 30002; T.C. Case No. C-2020-003103-OP
Panel: Epley, Lewis, Huffman
Author: Mary K. Huffman
Summary: The juvenile court did not abuse its discretion in overruling Mother's objection to the magistrate's decision to grant permanent custody of her child to a children services agency. Mother's objection was based solely on the magistrate's denial of a continuance when Mother failed to appear at the permanent custody hearing unexpectedly and without communication with her counsel or the court. The court reasonably weighed the competing factors of the child's best interest and the inconvenience to the parties and the court. Judgment affirmed.

Case Name: *State of Ohio v. Zaheem Fitzgerald*
Case No: Clark C.A. No. 2023-CA-44; T.C. Case No. 22-CR-0365(A)
Panel: Epley, Welbaum, Tucker
Author: Christopher B. Epley
Summary: The trial court did not abuse its discretion when it overruled appellant's presentence motion to vacate his guilty plea. The trial court did not err in imposing the maximum sentence on one count of felonious assault or in imposing consecutive sentences. Judgment affirmed.

Case Name: *State of Ohio v. Gary Kelly*
Case No: Montgomery C.A. No. 29774; T.C. Case No. 2018 CR 04548
Panel: Tucker, Lewis, Huffman
Author: Ronald C. Lewis
Summary: Appellant was convicted after a bench trial of gross sexual imposition and public indecency based on conduct that occurred in 2018 with a four-year-old child. He was separately convicted after a jury trial of three counts of rape, one count of attempted rape, and six counts of gross sexual imposition stemming from his conduct with two sisters

between 1987 and 1993. At the bench trial, the trial court did not err in denying appellant's Crim.R. 29(A) motion regarding gross sexual imposition. The trial court did not err in declaring the then seven-year-old victim unavailable to testify at trial pursuant to Evid.R. 807. The trial court did not err in allowing two witnesses to review police reports, which they did not prepare, to refresh their recollections. Even if the trial court should have granted appellant's motion in limine regarding prior bad acts, the trial court did not err in allowing the State to play a disputed portion of appellant's police interview during the bench trial, because the court indicated that it would disregard the evidence if it determined, upon hearing all the evidence, that the evidence should have been excluded. Trial counsel did not render ineffective assistance when he withdrew a motion to suppress appellant's statements to the police. With respect to the counts concerning the two sisters, the trial court properly denied the motion to dismiss the charges concerning the younger sister. However, the rape charges concerning the older sister were brought outside of the statute of limitations. The trial court did not err in denying appellant's motion in limine seeking to use statements and information from the sisters' medical records for cross-examination. Judgment affirmed in part and vacated in part.