

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
May 26, 2023

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Case Name: *State of Ohio v. Michael Jerome Crowley, II*
Case No: Clark C.A. No. 2022-CA-59; T.C. Case No. 22-CR-0329
Panel: Tucker, Lewis, Huffman
Author: Mary K. Huffman
Summary: Reviewing pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), we conclude that appellate counsel's potential assignments of error are wholly frivolous. There is no suggestion that appellant was unaware of his right to testify at trial, counsel represented that he had spoken to appellant about that right, and the trial court was not required to conduct a hearing regarding appellant's waiver of that right. Defense counsel's failure to move for an acquittal was not ineffective assistance; reasonable minds could conclude that the State had proven all the elements of kidnapping and assault on a peace officer. While counsel's failure to renew his claim of prejudicial joinder arguably constituted deficient performance, on this record it would be wholly frivolous to argue that the failure to renew prejudiced appellant; in separate trials, the State could have introduced other acts evidence pursuant to Evid.R. 404(B), and the evidence of each crime was simple and direct. It would be wholly frivolous to argue that the trial court abused its discretion by overruling the severance motion. Judgment affirmed.

Case Name: *Jordan M. Wortham v. City of Dayton, Ohio*
Case No: Montgomery C.A. No. 29578; T.C. Case No. 2021 CV 00546
Panel: Welbaum, Epley, Lewis
Author: Ronald C. Lewis
Summary: The trial court did not err in finding that the Civil Service Board's order was supported by a preponderance of reliable, probative, and substantial evidence. The Civil Service Board was not required to listen to the recorded statement upon remand from the trial court. Dayton Police Department Rules of Conduct Rule 8.2, which requires termination for making false statements, is not unlawful, unreasonable, arbitrary, or unconstitutional. Appellant's termination

from employment was not unlawful, arbitrary, unreasonable, unconstitutional, or a violation of his due process rights. Judgment affirmed.

Case Name: *State of Ohio v. Leon Aaron Morris*
Case No: Montgomery C.A. No. 29555;
T.C. Case Nos. 2020 CR 03962; 2022 CR 01403
Panel: Welbaum, Epley, Lewis
Author: Jeffrey M. Welbaum
Summary: Appellant did not object to the trial court's failure to merge his convictions for carrying a concealed weapon and having a weapon under disability. A plain error analysis, therefore, applies. Under applicable case law and the record, the offenses were committed with a separate animus, merger was not warranted, and no plain error occurred. Judgment affirmed.

Case Name: *State of Ohio v. William Taylor*
Case No: Montgomery C.A. No. 29443; T.C. Case No. 2019 CR 02787/2
Panel: Welbaum, Epley, Lewis
Author: Jeffrey M. Welbaum
Summary: Appellant's felonious assault convictions were supported by sufficient evidence because the State established that appellant had used deadly force and that his victims had suffered serious physical harm. The trial court did not err in captioning the jury verdict forms with the words "serious harm" rather than "serious physical harm." Using captions to identify offenses is a rational way to identify the verdict for each offense, particularly where, as here, many offenses were involved. The trial court did err in calculating the proper sentence under the Reagan Tokes Law, as the State concedes. However, the court did not err in imposing consecutive sentences. Under *State v. Gwynne*, Ohio Slip Opinion No. 2022-Ohio-4607, ___ N.E.3d ___, a trial court must consider each sentence on individual counts that it intends to impose consecutively on the defendant and the aggregate prison term that will result. Nonetheless, we are unable to reach a firm conviction or belief that "the record does not support the trial court's necessity or proportionality findings in light of the actual number of consecutive terms that it imposed and the resulting aggregate sentence." *Id.* at ¶ 17.

The trial court did not err in ordering appellant to pay restitution. Appellant failed to object to the amount or to ask for a hearing in the trial court, the trial court considered appellant's ability to pay, and the amount of restitution was minimal. Finally, no error occurred in imposing court costs, because appellant failed to file a motion in the trial court seeking waiver of court costs based on his alleged indigent status. Appellant has also not lost his ability to make such a request,

since R.C. 2947.23(C) allows defendants to make such requests at the time of sentencing or at any time thereafter. Judgment affirmed in part, reversed in part (as to the error in calculating the sentence under the Reagan Tokes Law), and remanded.