

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
June 2, 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. Gregory Clemmons*
Case No: Montgomery C.A. No. 29638; T.C. Case No. 2007 CR 04544
Panel: Welbaum, Tucker, Epley
Author: Christopher B. Epley
Summary: The trial court did not abuse its discretion in denying appellant's motion for leave to file a motion for a new trial. Appellant did not establish that he had been unavoidably prevented from discovering evidence regarding the grand jury foreperson's signature. Even if the motion were allowed, the trial court could not grant a new trial based on the alleged defect in the indictment. Judgment affirmed.

Case Name: *State of Ohio v. Dustin Midkiff*
Case No: Clark C.A. No. 2022-CA-62; T.C. Case No. 22-CR-0442
Panel: Welbaum, Lewis, Huffman
Author: Ronald C. Lewis
Summary: Appellant's guilty plea waived any alleged error committed by the trial court in denying his motions for continuance of the trial. The State concedes error in the trial court's failure to properly advise appellant at sentencing of the notifications set forth in R.C. 2929.19(B)(2)(c). Judgment affirmed in part, reversed in part, and remanded for resentencing.

Case Name: *State of Ohio v. Octavius Lamont Humphrey*
Case No: Montgomery C.A. Nos. 29479; 29480;
T.C. Case Nos. 2020 CR 03714; 2020 CR 03896
Panel: Welbaum, Lewis, Huffman
Author: Jeffrey M. Welbaum
Summary: Appellant's convictions for murder and other offenses were supported by legally sufficient evidence and were not against the manifest weight of the evidence. No prosecutorial misconduct deprived appellant of a fair trial. Appellant's warrantless arrest outside his home was lawful, and a search warrant for his home was supported by probable cause. The record does not reflect that

appellant received ineffective assistance of trial counsel. Judgments affirmed.

Case Name: *State of Ohio v. Brian Frantz, Jr.*
Case No: Clark C.A. No. 2022-CA-61; T.C. Case No. 22-CR-0005(B)
Panel: Welbaum, Tucker, Epley
Author: Jeffrey M. Welbaum
Summary: The trial court did not err by considering appellant's dismissed aggravated robbery charges at sentencing; the trial court is permitted to consider evidence at sentencing that does not strictly relate to the convicted offense. In addition, the trial court did not offend the constitution by applying the indefinite sentencing scheme established under the Reagan Tokes Law. This court has consistently rejected arguments claiming that the Reagan Tokes Law violates the separation-of-powers doctrine and the right to due process and that the law is unconstitutionally vague. Judgment affirmed.

Case Name: *Darryl Thomas Sr. v. Servicemaster Absolute Cleaning Restoration Inc. et al.*
Case No: Montgomery C.A. No. 29651; T.C. Case No. 2021 CV 01541
Panel: Welbaum, Tucker, Epley
Author: Michael L. Tucker
Summary: The trial court did not err in entering summary judgment for appellee on appellant's negligence complaint involving injuries sustained when a basement staircase collapsed. The record reveals no genuine issue of material fact as to whether appellee breached a duty of care by removing structural supports from the staircase when remediating water damage or whether appellee proximately caused appellant's injury when the staircase fell two months after the remediation work. The trial court also correctly found no genuine issue of material fact as to whether appellee breached a duty of care by failing to conduct a post-work inspection of the staircase's structural integrity. Judgment affirmed.

Case Name: *Michael P. Planchak v. B. Gary Ladd*
Case No: Montgomery C.A. No. 29703; T.C. Case No. 2006 CV 04854
Panel: Welbaum, Lewis, Huffman
Author: Mary K. Huffman
Summary: The trial court did not abuse its discretion in overruling appellant's untimely Civ.R. 60(B) motion to vacate judgment, which was filed 15 years after the judgment was entered. Appellant could not rely upon the grounds for relief in Civ.R. 60(B)(3) due to the untimeliness of his motion, and he did not demonstrate substantial grounds warranting relief under Civ.R. 60(B)(5) due to a fraud upon the court. Appellee's motion for attorney fees is not properly before us. Judgment affirmed.

Case Name: *State of Ohio v. William Campbell*
Case No: Montgomery C.A. No. 29633; T.C. Case No. 1991 CR 01583
Panel: Welbaum, Lewis, Huffman
Author: Mary K. Huffman
Summary: Appellant did not file a direct appeal from his designation as a sexual predator in 2000. Twenty-two years later, he filed a motion in the trial court raising constitutional challenges to his sexual predator designation. The trial court did not err in concluding that the issue was barred by res judicata. Additionally, the trial court did not err in retroactively applying Megan's Law at appellant's sex offender determination hearing, as Megan's Law could be applied retroactively and was not an ex post facto law. Judgment affirmed.