

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
August 18, 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. Diane Six*
Case No: Clark C.A. No. 2023-CA-1; T.C. Case No. 21-CR-0379
Panel: Welbaum, Lewis, Huffman
Author: Jeffrey M. Welbaum
Summary: Appellate counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), having found no non-frivolous issues for appeal. An examination of the record reveals no non-frivolous issues having arguable merit. Judgment affirmed.

Case Name: *State of Ohio v. Kevin C. Wright*
Case No: Miami C.A. No. 2022-CA-27; T.C. Case No. 20 CR 87
Panel: Welbaum, Lewis, Huffman
Author: Jeffrey M. Welbaum
Summary: The trial court erred in part in denying a hearing on appellant's petition for post-conviction relief. First, the court failed to distinguish between standards that apply to ineffective assistance of counsel claims on direct appeal and what is required for simply obtaining a hearing on post-conviction petitions. Contrary to the trial court's conclusions, a post-conviction petition does not have to definitively establish trial counsel's deficiency or whether appellant was prejudiced by the deficiency to warrant a hearing. Instead, the petition must be sufficient on its face to raise issues about whether appellant was deprived of effective assistance of counsel, and the claim must depend on factual allegations that cannot be decided by examining the record from the appellant's trial. In addition, the trial court erred in rejecting various claims on the basis that the same issues were raised on direct appeal. Where matters outside the record are presented, this is not an appropriate basis for rejecting post-conviction petitions. Furthermore, the trial court erred in categorically stating that failure to call an expert and relying instead on cross-examination did not constitute ineffective assistance of counsel. This is true in direct appeals, where courts are often forced to speculate, as this alone cannot overcome the strong presumption

that counsel rendered reasonable assistance. However, in post-conviction situations, courts are able to consider matters outside the record and are, therefore, not confined to speculation. The trial court did not err in rejecting one expert's affidavit, which did not concern matters outside the record. The court also correctly rejected a claim based on trial counsel's failure to file a motion to suppress. While this claim did involve matters outside the record, the petition was insufficient on its face as there was no possible basis for suppression. Judgment affirmed in part, reversed in part, and remanded for a hearing on some issues raised in the petition.

Case Name: *State of Ohio v. John C. Stumbo, II*
Case No: Clark C.A. No. 2022-CA-90; T.C. Case No. 22CR0632
Panel: Tucker, Lewis, Huffman
Author: Michael L. Tucker
Summary: The record supported appellant's future ability to pay a \$2,500 fine imposed in connection with his fifth-degree felony conviction for aggravated drug possession. Judgment affirmed.

Case Name: *State of Ohio v. Matthew Caupp*
Case No: Montgomery C.A. No. 29717; T.C. Case No. 2021 CR 03379
Panel: Welbaum, Tucker, Epley
Author: Michael L. Tucker
Summary: Appellant's conviction for aggravated possession of drugs was supported by sufficient evidence. As such, the trial court did not err by overruling appellant's Crim.R. 29(A) motion for acquittal. Judgment affirmed.

Case Name: *State of Ohio v. Jacob Andrew Morrow*
Case No: Champaign C.A. No. 2023-CA-6; T.C. Case No. 2022 CR 149
Panel: Tucker, Lewis, Huffman
Author: Mary K. Huffman
Summary: The jury's finding that appellant had obstructed official business and, in doing so, had created a risk of harm to himself or others was supported by sufficient evidence and was not against the manifest weight of the evidence. During a lengthy altercation in the jail, appellant repeatedly kicked the door to his cell and hit the windows after being told not to do so; additionally, after being pepper sprayed, he physically resisted the officers' attempt to place him in a restraint chair. The trial court lacked jurisdiction to file a nunc pro tunc entry while this appeal was pending to correct a clerical error regarding the imposition of post-release control, but it is not prevented from doing so after this appeal is resolved. Judgment affirmed.

Case Name: *State of Ohio v. Jason Tucker*
Case No: Clark C.A. No. 2022-CA-79; T.C. Case No. 21-CR-0352
Panel: Welbaum, Tucker, Epley
Author: Christopher B. Epley
Summary: Appellant's conviction for operating a vehicle under the influence of drugs or alcohol (OVI), with a repeat OVI offender specification, was based on sufficient evidence and was not against the manifest weight of the evidence. The trial court did not err in allowing a state trooper to testify that he believed appellant had been intoxicated, in allowing the State to offer a letter written by appellant to the prosecutor approximately a week before trial, and in admitting the State's exhibits related to appellant's prior OVI convictions. Judgment affirmed.

Case Name: *Miami Township Board of Trustees v. Darren Powlette, et al.*
Case No: Montgomery C.A. No. 29596; T.C. Case No. 2019 CV 05444
Panel: Welbaum, Tucker, Epley
Author: Christopher B. Epley
Summary: The trial court erred by classifying a contempt sanction as civil in nature when it had all the hallmarks of a criminal penalty. The court thus erred in imposing that sanction upon finding that appellant had violated the injunction following a civil contempt hearing. Judgment reversed and remanded.