

**THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
February 8, 2019**

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. Kristina Nicole Thompson*
Case No: Champaign App. No. 2018-CA-4; T.C. Case No. 17-CR-212
Panel: Donovan, Hall, Tucker
Author: Michael T. Hall
Summary: The trial court properly overruled the appellant's suppression motion where the record reflects that she knowingly and intelligently waived her *Miranda* rights and nothing in the record demonstrates or even suggests that her PTSD impaired her reasoning ability or otherwise prevented her from making a valid waiver. Judgment affirmed.

Case Name: *State of Ohio v. Jesse M. Stinson*
Case No: Montgomery App. No. 28073; T.C. Case No. 13-CR-237
Panel: Donovan, Froelich, Hall
Author: Michael T. Hall
Summary: The trial court did not abuse its discretion in finding that the appellant, a prison inmate, had failed to establish that public records he requested were "necessary to support what appears to be a justiciable claim," as required by R.C. 149.43(B)(8). Judgment affirmed.

Case Name: *State of Ohio v. Khadija Hammitt-Marette*
Case No: Montgomery App. No. 28157; T.C. Case No. 18-CR-2197/1
Panel: Welbaum, Froelich, Tucker
Author: Jeffrey M. Welbaum
Summary: The trial court erred in finding that the defendant clearly and unambiguously invoked her right to counsel during a police interview and in suppressing the defendant's subsequent statements to police on that basis. Reversed and remanded for further proceedings. (Froelich, J., dissenting.)

Case Name: *Greater Dayton Regional Transit Authority v. Amalgamated Transit Union AFL-CIO Local 1385*
Case No: Montgomery App. No. 28155; T.C. Case No. 2018-CV-3250
Panel: Welbaum, Hall, Tucker
Author: Jeffrey M. Welbaum
Summary: The trial court did not err in confirming an arbitration award entered in favor of a labor union. The award drew its essence from the collective bargaining agreement because it did not conflict with the agreement's express terms and was rationally supported by the agreement. The parties agreed to assign a specific task to a particular job classification, and there was also a past practice of having only employees in that job classification perform the task. This past practice was unequivocal, was clearly enunciated, and was followed for a reasonable period of time as a fixed and established practice accepted by both parties. It, therefore, was binding on the parties. Even if the past practice had not been binding, the collective bargaining agreement specifically required past practices or precedent to be considered in interpreting the agreement. Judgment affirmed.

Case Name: *State of Ohio v. Charles T. Ingledue*
Case No: Clark App. No. 2018-CA-47; T.C. Case No. 17-CR-0189
Panel: Welbaum, Froelich, Tucker
Author: Michael L. Tucker
Summary: Appellant, following his admission that he violated several community control sanction conditions, was ordered to serve a second six-month jail term. A stay was not requested and the jail term has been served. Though the trial court was without authority to impose a second six-month jail term, Appellant's appeal, since it attacks only the already served jail term, is moot. Appeal dismissed.

Case Name: *State of Ohio v. Stephen Scott Reese*
Case No: Champaign App. No. 2018-CA-10; T.C. Case No. 17-CR-175
Panel: Donovan, Hall, Tucker
Author: Michael L. Tucker
Summary: The record supports the trial court's conclusion that Appellant's vehicle was lawfully towed based upon a standardized police department policy. The record further supports the trial court's conclusion that in all respects the inventory search was conducted pursuant to a standardized, routine policy and that the officer's conduct conformed to the policy. Finally, the record does not support a finding of ineffective assistance of counsel. Judgment affirmed.

Case Name: *Paul D. Thies v. City of Dayton, Ohio, et al.*
Case No: Montgomery App. No. 28029; T.C. Case No. 18-CV-1541
Panel: Donovan, Hall, Tucker
Author: Michael L. Tucker
Summary: The trial court correctly concluded that a city commission's zoning change decision was a legislative act, and, accordingly, it did not have subject matter jurisdiction to hear Appellant's R.C. 2506.01 administrative appeal contesting the zoning decision. Judgment affirmed.

Case Name: *State of Ohio v. Michael S. Gearhardt*
Case No: Montgomery App. No. 28088; T.C. Case No. 15-CR-2465
Panel: Donovan, Hall, Tucker
Author: Mary E. Donovan
Summary: Gearhardt was entitled to a hearing on his "Application for Sealing of Conviction and Arrest," pursuant to R.C. 2953.52(B). The State concedes that the trial court erred in denying his application without a hearing. Reversed and remanded.

Case Name: *State of Ohio v. Sidney P. Brown*
Case No: Montgomery App. No. 28048; T.C. Case No. 16-CR-2180
Panel: Donovan, Froelich, Hall
Author: Mary E. Donovan
Summary: Because appellant failed to file a direct appeal of the trial court's order overruling his "motion for relief of post-release control," his claim regarding the violation of his double jeopardy rights is barred by res judicata. Nevertheless, the trial court did not err when it imposed a prison sentence and a term of post-release control on appellant after he violated his community control. Both the initial prison sentence and the term of post-release control were part of appellant's original sentence. Accordingly, the trial court did not violate Brown's right to be free from double jeopardy. Judgment affirmed.

Case Name: *State of Ohio v. Donald F. Scott, Sr.*
Case No: Montgomery App. No. 28039; T.C. Case No. 14-CR-1862
Panel: Donovan, Froelich, Hall
Author: Jeffrey E. Froelich
Summary: Following the revocation of his community control and the imposition of a three-year prison term, defendant claimed that the trial court's original imposition of community control was void, rendering the imposition of the three-year prison sentence void. Defendant's appeal is not moot, even though he has served the three-year sentence, because he is on post-release control. Defendant's original community control sentence and his three-year sentence

upon revocation were not void. Defendant's claims are barred by res judicata. Judgment affirmed.

Case Name: *Greater Dayton Regional Transit Authority v. Amalgamated Transit Union AFL CIO Local 1385*
Case No: Montgomery App. No. 28090; T.C. Case No. 18-CV-1904
Panel: Donovan, Froelich, Hall
Author: Jeffrey E. Froelich
Summary: The trial court did not err in confirming and refusing to vacate an arbitration award in favor of union and against transit authority with regard to transit authority's practice of contracting outside entities to provide a portion of transportation services mandated for individuals with disabilities. The arbitrator did not exceed his authority by interpreting the applicable collective bargaining agreement as prohibiting transit authority from subcontracting driving duties normally performed by union bus operators. Judgment affirmed.

Case Name: *State of Ohio v. Shane R. Ramey*
Case No: Clark App. No. 2017-CA-99; T.C. Case No. 13-CR-776
Panel: Donovan, Froelich, Hall
Author: Jeffrey E. Froelich
Summary: Trial court did not err by failing to conduct a hearing before denying defendant's post-appeal motion to withdraw his guilty pleas. Trial court lacked jurisdiction to permit defendant to withdraw his guilty pleas after the court of appeals had affirmed defendant's conviction. In addition, the undisputed facts establish that the search warrant on defendant's residence was timely executed, thereby negating defendant's claim that trial counsel performed deficiently by failing to advise defendant of a possible defense based on an untimely search. Finally, defendant's reply memorandum in the trial court affirmatively waived a hearing on his motion to withdraw. Under such circumstances, trial court was not required to hold a hearing on defendant's motion. Judgment affirmed.