

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
June 17, 2022

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Case Name: *Andrea M.K. Pruitt v. Jacob W. Pruitt*
Case No: Montgomery App. No. 29331; T.C. Case No. 2018-DR-752
Panel: Welbaum, Epley, Lewis
Author: Christopher B. Epley
Summary: Husband's appeal of the property division in a divorce decree was not moot where Wife's evidence failed to demonstrate that he had satisfied that portion of the judgment. The trial court did not abuse its discretion in failing to compensate Husband for Wife's claiming their minor son as a dependent for tax purposes during the pendency of the divorce or in allocating the debt on his credit cards solely to him, except for \$1,500. The trial court abused its discretion in failing to address disputed property that Wife took from the marital home during the pendency of the case. The trial court did not abuse its discretion in designating Wife as residential and custodial parent of the minor child or in its determination of Husband's parenting time. Judgment affirmed in part, reversed in part, and remanded for further proceedings.

Case Name: *In re Application for Correction of Birth Record of Hailey Emmeline Adelaide*
Case No: Clark App. No. 2022-CA-1; T.C. Case No. 20219090
Panel: Tucker, Welbaum, Lewis
Author: Ronald C. Lewis
Summary: R.C. 3705.15 is a correction only statute. Where appellant petitioned for an amendment of the sex marker on her birth certificate, the probate court lacked authority under R.C. 3705.15 to grant the petition. Judgment affirmed.

Case Name: *State of Ohio v. Aaliyah Winters*
Case No: Montgomery App. No. 29157; T.C. Case No. CRB 2100049
Panel: Tucker, Welbaum, Lewis
Author: Ronald C. Lewis
Summary: Appellant's conviction for disorderly conduct was based on sufficient evidence and was not against the manifest weight of the evidence, but because the complaint only alleged a minor misdemeanor level of the offense, her conviction is modified from a fourth-degree misdemeanor to a minor misdemeanor. Trial counsel was not ineffective in failing to file a request for discovery. The 30-day suspended jail sentence is vacated because no jail term may be imposed for a minor misdemeanor. Judgment vacated in part and affirmed as modified.

Case Name: *State of Ohio v. Thomas M. West*
Case No: Greene App. No. 2021-CA-17; T.C. Case No. 2020-CV-642
Panel: Tucker, Welbaum, Lewis
Author: Jeffrey M. Welbaum
Summary: The trial court did not err by granting summary judgment in favor of the State on its vexatious litigator complaint and by designating appellant a vexatious litigator, where the State satisfied its burden to establish that no genuine issue of material fact existed for trial. The trial court's summary judgment ruling was not premature and did not deny appellant his right to discovery. Appellant's claim that the vexatious litigator statute is unconstitutional also lacks merit, as it is well established that the statute is constitutional in its entirety. Judgment affirmed.

Case Name: *State of Ohio v. Shaun J. Haralson*
Case No: Miami App. No. 2021-CA-38; T.C. Case No. 2021-CR-203A
Panel: Tucker, Welbaum, Lewis
Author: Jeffrey M. Welbaum
Summary: The trial court did not err by overruling appellant's motion to suppress drug evidence that was discovered on appellant's person and in his residence during the execution of a search warrant. The search warrant was not improperly executed, as it was not unlawful for the officers to execute the search warrant before filing it with the clerk of court. In addition, the search warrant's supporting affidavit included a request to search appellant's person and alleged facts that provided a substantial basis to conclude that there was probable cause to search appellant's person for evidence of drug trafficking. Judgment affirmed.

Case Name: *State of Ohio v. Travis Kennard*
Case No: Montgomery App. No. 29201; T.C. Case No. 2021-CRB-1986
Panel: Welbaum, Epley, Lewis
Author: Jeffrey M. Welbaum
Summary: The trial court's findings that appellant had committed domestic violence and assault were supported by sufficient evidence and were not against the manifest weight of the evidence; after merger of the offenses, appellant was properly convicted of domestic violence. Appellant's claim that his trial counsel provided ineffective assistance by having him testify at trial lacks merit because such a decision is a matter of trial strategy that cannot form the basis of an ineffective assistance claim. Additionally, appellant's claim that his trial counsel was ineffective for failing to advise him of his right not to testify at trial is a matter outside the record that cannot be raised on direct appeal. Judgment affirmed.

Case Name: *State of Ohio v. Jacob David Leamman*
Case No: Champaign App. Nos. 2021-CA-30 and 2021-CA-35;
T.C. Case No. 2021-CR-72
Panel: Tucker, Welbaum, Lewis
Author: Michael L. Tucker
Summary: Application of the Reagan Tokes Act to appellant at sentencing did not violate his right to due process, trial by jury, or the separation-of-powers doctrine. Defense counsel did not provide ineffective assistance by failing to object to appellant's being sentenced under the Reagan Tokes Act's indeterminate-sentencing scheme. The trial court did not err in overruling appellant's plea-withdrawal motion without holding an evidentiary hearing. Judgment affirmed.

Case Name: *State of Ohio v. William Dixon*
Case No: Montgomery App. No. 29324; T.C. Case No. 2005-CR-4213/4
Panel: Tucker, Welbaum, Lewis
Author: Michael L. Tucker
Summary: This is appellant's eighth appeal regarding his 2006 convictions for complicity to commit aggravated robbery, complicity to commit aggravated burglary, complicity to commit felonious assault, and three attendant firearm specifications. The trial court properly overruled appellant's motion to withdraw his plea and vacate the convictions. Judgment affirmed.

Case Name: *In re M.W., Jr.*
Case No: Montgomery App. No. 29413; T.C. Case No. G-2019-002613-0J,0N
Panel: Tucker, Donovan, Epley
Author: Michael L. Tucker
Summary: The trial court did not abuse its discretion in awarding Mother legal custody of the parties' minor child, thereby reunifying her with the child following an adjudication of neglect and dependency. The record supports the trial court's analysis of the statutory best-interest factors. Judgment affirmed.

Case Name: *State of Ohio v. Latre Tate*
Case No: Montgomery App. No. 29301;
T.C. Case Nos. 2020-CR-177, 2020-CR-2589, 2021-CR-2172/1
Panel: Tucker, Donovan, Lewis
Author: Mary E. Donovan
Summary: After conducting an independent review of the record as required by *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), we find no issues with arguable merit for appeal. The record reflects that the trial court fully complied with the requirements of Crim.R. 11(E) and that appellant entered his guilty plea to unauthorized use of a motor vehicle knowingly, intelligently, and voluntarily in Case No. 2021-CR-2172/1. Furthermore, appellant was afforded all of his due process protections before the trial court revoked his community control on unrelated felony counts in Case Nos. 2020-CR-2589 and 2020-CR-177 and sentenced him to an aggregate prison term of 18-months. Judgment affirmed.

DECISION AND ENTRY RENDERED DECEMBER 3, 2021

Case Name: *State of Ohio v. Thomas M. West*
Case No. Greene App. No. 2021-CA-17; T.C. Case No. 2020-CV-642
Panel: Donovan, Welbaum, Hall
Author: Per Curiam
Summary: A vexatious litigator proceeding under R.C. 2323.52 satisfies the definition of a special proceeding, and a judgment entry determining that a litigant is a vexatious litigator affects his or her substantial right, namely access to the courts without first obtaining leave. However, to be a final appealable order, a judgment making a vexatious litigator determination must include the trial court's certification that there is no just reason for delay under Civ.R. 54(B) if counterclaims are still pending in the trial court at that time. The trial court's

determination in this case that appellant was a vexatious litigator was not a final order when it was issued, because all pending claims had not been resolved and the order did not contain Civ.R. 54(B) certification, but it became final several weeks later when the trial court dismissed the counterclaims and fully resolved the case. Appellant has a limited right to appeal if a timely notice of appeal is filed. The “prison mailbox rule” is inapplicable to the filing of appellant’s notice of appeal. Our show cause order is satisfied in part and not satisfied in part, and appellant’s application for leave to appeal is granted in part and denied in part. (Hall, J. concurring.)