

R E L E A S E

NOVEMBER 9, 2001

ASHTABULA

2000-A-0070 STATE OF OHIO, Plaintiff-Appellee v. TERRY LEE PATTERSON,
Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [NADER] (O'NEILL)
(GRENDALL)

POST-CONVICTION RELIEF:

Persons convicted before the 1995 effective date of R.C. 2953.21(A)(2), which sets time limits on the filing of a petition for post-conviction relief, had until September 23, 1996 to file a petition for post-conviction relief. Petitions filed after that date are barred.

LAKE

2000-L-031 STATE OF OHIO, Plaintiff-Appellee v. KENNETH GRUBER, III,
Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [NADER] (O'NEILL)
(CHRISTLEY)

CRIMINAL PROCEDURE:

While literal compliance with the nonconstitutional requirements of Crim.R. 11(C)(2) is preferred, a guilty plea is valid as long as the trial court substantially complies with the requirements, by determining that the defendant subjectively understands the implications of his plea and the rights he is waiving.

After sentence is imposed, a motion to withdraw a guilty plea may only be granted to correct manifest injustice.

The court is not required to give a defendant a hearing on a motion to withdraw a guilty plea if the facts alleged by the defendant, and accepted as true by the court, would not require the guilty plea to be withdrawn.

2000-L-060 STATE OF OHIO, Plaintiff-Appellee v. FRANKLIN J. TAYLOR,
Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [GRENDALL] (CHRISTLEY) (NADER)

CRIMINAL LAW:

The determination that an offender is a sexual predator must be supported by clear and convincing evidence that the offender is likely to commit a future sexually oriented offense. A trial court must consider all relevant factors including, but not limited to, those listed in R.C. 2950.09(B)(2). A trial court has discretion in determining what weight, if any, will be assigned to each relevant factor. A trial court is not required to find the existence of a majority of the factors before it can determine that an offender is a sexual predator.

2000-L-132 STATE OF OHIO, Plaintiff-Appellee v. MELANIE L. BAKER, Defendant-Appellant.

Judgment reversed and remanded. See Opinion and Judgment Entry. [NADER] (O'NEILL) (CHRISTLEY)

CRIMINAL LAW/SENTENCING:

When a court sentences an offender, who has not previously served a prison term, to a prison term, the court must sentence the offender to the minimum term, unless the court finds, on the record, that the shortest prison term will demean the seriousness of the offender's conduct or will not adequately protect the public from future crimes by the offender.

For the fifth degree felony of trafficking in marijuana, the sentencing court is required to apply R.C. 2929.13(C), not R.C. 2929.13(B), when determining whether to impose a prison term on the defendant.

2000-L-207 JAMES ASPINWALL, et al., Appellants v. BOARD OF TAX REVIEW FOR THE CITY OF MENTOR, et al., Appellees.

Judgment affirmed in part, reversed in part and remanded. See Opinion and Judgment Entry. [GRENDALL] (FORD) (CHRISTLEY)

ADMINISTRATIVE APPEAL:

A trial court does not sit as a trier of fact in an administrative appeal. Rather, a trial court acts as a reviewing court. Hence, the rules of appellate procedure are applicable. R.C. 2506.04 provides that, in an administrative appeal, a court may affirm, reverse, vacate, or modify the order, adjudication, or decision consistent with the findings or opinion of the court. A trial court may not dismiss an administrative appeal since such action is not authorized except for jurisdictional reasons.

RES JUDICATA:

The doctrine of *res judicata* is applicable to quasi-judicial decisions by administrative agencies from which no appeal is taken. *Res judicata* precludes re-litigation of the same issue when there is mutuality of the parties and when a final decision has been rendered on the merits.

2001-L-002 CITY OF MENTOR, Plaintiff-Appellee v. JOHN JOHNSON, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [NADER] (CHRISTLEY) (GRENDALL)

CRIMINAL LAW/SEARCH & SEIZURE:

A police officer has probable cause to support the stop of a driver if the officer, at the moment, had facts and circumstances within his knowledge which were sufficient to lead a prudent man to believe that the subject was committing or had committed an offense.

A police officer has probable cause to stop a driver and issue a citation, when he witnesses the driver making a turn without using a signal.

2001-L-028 RANDY WELCH, Plaintiff-Appellant v. CNA INSURANCE, et al., Defendant-Appellee.

Upon the request of Appellant, the appeal is hereby dismissed. See Judgment Entry.

2001-L-056 LAKE COUNTY DEPARTMENT OF HUMAN SERVICES, et al., Plaintiff-Appellant v. KENNETH MISCH, Defendant-Appellee.

Appeal dismissed. See Memorandum Opinion and Judgment Entry. [CHRISTLEY] (FORD) (NADER)

APPELLATE REVIEW:

The denial of a motion to impose sentence in a contempt proceeding does not constitute a final appealable order when the denial of the motion does not prejudice the moving party.

PORTAGE

2000-P-0115 SHERRY MAGLIONICO, et al., Plaintiffs-Appellees v. ANDREW MAGLIONICO, Defendant-Appellant.

Judgment reversed. See Opinion and Judgment Entry. [GRENDALL] (CHRISTLEY) (NADER)

CIVIL:

A trial court shall issue a civil protection order, pursuant to R.C. 3113.31, upon the existence or threatened existence of

domestic violence. The petitioner must demonstrate, by a preponderance of the evidence, that he and/or his family or household members are in danger of domestic violence. R.C. 3113.31(A)(1)(b) defines "domestic violence" as, among other things, the placing of a family or household member in fear of imminent serious physical harm by threat or force. R.C. 3113.31(A)(3)(a)(ii) defines a "family or household member" as, among other things, those persons related by consanguinity or affinity who reside together or have resided together.

2000-P-0119 STATE OF OHIO, Plaintiff-Appellant v. ERIC B. FAILS, Defendant-Appellee.

Judgment reversed and remanded. O'Neill, P.J., dissents. See Opinion and Judgment Entry. [GRENDLELL] (O'NEILL) (FORD)

CRIMINAL LAW/SENTENCING:

According to R.C. 2929.19(B)(2)(b), when a prison term is not imposed for a felony drug offense in violation of R.C. 2925 of which there is a presumption in favor of prison, a trial court must make a finding that gives its reason for not imposing a prison term and overriding the presumption, based upon the purposes of felony sentencing under R.C. 2929.11 and the basis of its findings under R.C. 2929.13(D)(1) and (2). If a trial court fails to make the required findings, then, pursuant to R.C. 2953.08(G)(1), an appellate court must remand the matter, instructing the trial court to state, on the record, its requisite findings.

2001-P-0090 STEPHANIE ANN SCHMIDT, Plaintiff-Appellee v. THOMAS E. SCHMIDT, Defendant-Appellant.

This Court hereby dismisses this appeal for failure to prosecute. See Judgment Entry.

2001-P-0098 MARIAN T. MALLORY, Plaintiff-Appellee v. ROGER S. MALLORY, Defendant-Appellant.

Upon the request of Appellant, the appeal is hereby dismissed. See Judgment Entry.

RELEASED NOVEMBER 5, 2001:

GEAUGA

2001-G-2367 IN THE MATTER OF: EDWARD LITZ, DEPENDENT CHILD

Judgment affirmed. O'Neill, P.J., dissents. See Opinion and Judgment Entry. [CHRISTLEY] (O'NEILL) (GRENDLELL)

JUVENILE:

While a trial court may appoint an attorney as a guardian *ad litem* for an alleged abused, neglected, and/or dependent child, both Juv.R. 4(C) and R.C. 2151.281(H) contemplate

the appointment of an individual who is not an attorney. As a result, because the appointment of an attorney is not required, the trial court's decision not to do so will only be reversed upon a showing of an abuse of discretion.