

R E L E A S E

MARCH 15, 2002

ASHTABULA

2001-A-0068 STATE OF OHIO *ex rel.* THOMAS L. SARTINI, PROSECUTING ATTORNEY OF ASHTABULA COUNTY, OHIO, Relator v. FRANCIE CAGNOLI, et al., Respondents.

Upon the request of Relator, the Petition for Writ of Quo Warranto is hereby dismissed. See Judgment Entry.

2002-A-0005 STATE OF OHIO, Plaintiff-Appellee v. CAMERON STERLING, Defendant-Appellant.

Appeal dismissed. See Memorandum Opinion and Judgment Entry. [GRENDALL] (O'NEILL) (FORD)

APPELLATE PROCEDURE:

Pursuant to App.R. 4(A), a notice of appeal must be filed with the trial court within thirty days of the judgment or order appealed. When an appeal is filed beyond the thirty-day requirement in criminal cases, a motion for leave to file a delayed appeal, pursuant to App.R. 5(A), setting forth the reasons for the delay must be filed.

GEAUGA

2001-G-2329 and

2001-G-2330 STATE OF OHIO, Plaintiff-Appellee v. JESSE MADDOX, Defendant-Appellant.

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

CRIMINAL LAW:

A "sexual predator" is a person who has been convicted of or pled guilty to a sexually oriented offense *and* is likely to engage in the future in one or more sexually oriented offenses. A trial court must consider the factors 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. The totality of the relevant circumstances must provide, by clear and convincing evidence, that the offender is likely to commit a future sexually oriented offense.

TRANSCRIPTS:

An indigent criminal defendant is entitled to one free copy of a transcript at the state's expense when an appeal or post-conviction action is pending. The state is not required to provide an indigent defendant a copy of a transcript in addition to the one to be filed with the appellate court. The duty to provide a transcript at the state's expense extends only to providing one free transcript for the entire judicial system. R.C. 149.43(B)(1) provides that all public records are available for inspection during regular business hours in which copies can be made at cost. An incarcerated individual may designate a person to obtain public records on his behalf.

2001-G-2339 SUSAN LaROSA, Plaintiff-Appellee v. ARTHUR LaROSA, Defendant-Appellant.

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

CIV.R. 60:

Although a movant is not required to support a Civ.R. 60(B) motion with evidence in the form of affidavits or otherwise, such evidence is advisable in most cases. The moving party must do more than make bare allegations. If a Civ.R. 60(B) motion contains allegations of "operative facts," warranting relief from judgment under Civ.R. 60(B), a trial court should grant an evidentiary hearing prior to ruling on the motion. A Civ.R. 60(B) motion cannot be used as a substitute for filing a timely appeal or as a means to extend the time for filing an appeal from the original judgment.

LAKE

2000-L-183 and

2000-L-184 KYM L. MUHLFELDER, Plaintiff-Appellant v. PHILLIP S. MUHLFELDER, Defendant-Appellee.

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

JURISDICTION:

Divorce decree was not a final order because trial court did not determine the valuation of numerous marital assets of the parties. A trial court may not omit valuation altogether.

The failure to do so prevents this court from determining if the decision was fair, equitable, and in accordance with the law.

2001-L-017 STATE OF OHIO, Plaintiff-Appellee v. ZACHARY FITZPATRICK, Defendant-Appellant.

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

CRIMINAL LAW/SENTENCING:

Trial court record supported imposition of consecutive sentences. Evidence showed the victims suffered psychological harm from the robberies. The trial court relied upon the victim impact statements, the record, and pre-sentence report in determining appropriate sentence.

2001-L-204 FRED BUTCHER, Plaintiff-Appellant v. URSULA GIBSON, et al., Defendant-Appellee.

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

APPELLATE REVIEW:

When a trial court fails to state the amount of arrearages owed by the father, the court has not rendered a final judgment as to the mother's motion to determine and enforce arrearages.

2002-L-012 INTERLAKE STAMPING OF OHIO, INC., Appellee v. JOHN MOORE, et al., Appellant.

Appeal dismissed. See Memorandum Opinion and Judgment Entry. [NADER] (O'NEILL) (GRENDALL)

APPELLATE REVIEW:

The dismissal of a workers' compensation claim without prejudice is not a final appealable order as it neither determines the action nor prevents a judgment.

2002-L-030 STATE OF OHIO, Plaintiff-Appellee v. ALAN R. GLAVIC, JR., Defendant-Appellant.

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

PORTAGE

2001-P-0013 STATE OF OHIO, Plaintiff-Appellee v. MICHAEL W. MURDOCK, Defendant-Appellant.

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

POSTCONVICTION RELIEF:

An untimely petition for postconviction relief will not be entertained unless the petitioner shows: (1) the magnitude of the error is so great that but for the mistake, no reasonable trier of fact would have found him guilty, and (2) there is a very good excuse for the delay in filing the petition.

A person who has been convicted pursuant to a guilty plea, not by reason of trial, is prohibited from filing a petition for postconviction relief because he cannot satisfy the requirement of R.C. 2953.23(A)(2) that but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty.

2001-P-0062 CARMEN DEVELOPMENT COMPANY, Plaintiff v. DAVID S. ABRAMOWSKI, et al., Defendants/Third Party Plaintiffs-Appellants v. FERRARA & FERRARA, INC., et al., Third Party Defendants-Appellees.

Appeal dismissed. O'Neill, P.J., dissents. See Memorandum Opinion and Judgment Entry. [GRENDALL] (O'NEILL) (CHRISTLEY)

JURISDICTION:

Appellants amended their third party complaint after appellees filed motion for summary judgment. The amended third party complaint added a cause of action which was not addressed in the summary judgment motion. Consequently, the judgment entry granting summary judgment did not dispose of that claim. The appeal is dismissed pursuant to Civ.R. 54(B) as this court lacks jurisdiction to hear and determine the case.

2001-P-0075 and

2001-P-0087 KENNETH L. DEACON, SR., Appellee v. C. JAMES CONRAD, ADMINISTRATOR OF THE BUREAU OF WORKERS' COMPENSATION, et al., Appellant.

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

CIVIL/EVIDENCE:

The facts or data upon which an expert witness bases an opinion must be those perceived by him or admitted in evidence at the hearing.

2001-P-0076 RICHARD C. FARLEY, Petitioner-Appellant and CATHERINE A. FARLEY, Petitioner-Appellee.

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

2001-P-0100 LAURIE ANN KONCHAR, Plaintiff-Appellant v. AURORA MANOR L.P., d.b.a. AURORA MANOR SPECIAL CARE CENTRE, et al., Defendants-Appellees.

Appeal dismissed. See Memorandum Opinion and Judgment Entry. [NADER] (O'NEILL) (GRENDALL)

APPELLATE REVIEW:

A judgment that disposes of less than all parties is not a final appealable order absent Civ.R. 54(B) language.

TRUMBULL

2000-T-0137 GLORIA J. ALLEN, Plaintiff-Appellant v. THOMAS J. ALLEN, Defendant-Appellee.

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

DAMAGES:

The assessment of damages is so thoroughly within the province of the jury that a reviewing court is not at liberty to disturb the jury's assessment absent an affirmative finding of passion or prejudice.

2001-T-0005 STATE OF OHIO, Plaintiff-Appellee v. MARCUS L. HONZU, Defendant-Appellant.

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

CRIMINAL LAW:

Pursuant to the reasoning articulated in *State ex rel. Bray v. Russell* (2000), 89 Ohio St. 3d 132, the current version of R.C. 2929.19(B)(3)(b) violates the doctrine of separation of powers and is, therefore, unconstitutional.

2001-T-0008 STATE OF OHIO, Plaintiff-Appellee v. GARY G. FREEMAN, Defendant-Appellant.

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

CRIMINAL LAW:

When a court determines whether a verdict is against the manifest weight of the evidence, it weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.

CRIMINAL LAW/CONSTITUTIONAL:

In considering whether a confession was voluntary, the court should consider the totality of the circumstances.

If a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer would have understood only that the suspect might be invoking the right to counsel, the officer is not required to cease questioning.

An express written waiver of a person's Miranda rights is usually strong proof of the validity of the waiver, but it is not inevitably necessary or sufficient to establish a waiver.

The court could reasonably have found that a person printing his name at the bottom of a Miranda waiver form, rather than writing it in cursive, constituted a knowing and voluntary waiver of his rights.

CRIMINAL LAW/SEARCH & SEIZURE:

An officer's observance of any traffic law violation constitutes grounds to stop the vehicle.

Once a person is under arrest, officers may perform a complete search of the person, regardless of the offense which prompted the arrest.

Under the doctrine of plain view, an officer may seize an item without a warrant if the initial intrusion was lawful and the incriminating nature of the item is immediately apparent.

2001-T-0020 CHRISTINA A. RICHENDOLLAR, Plaintiff-Appellee v. BRIAN K. RICHENDOLLAR, Defendant-Appellant.

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

CIV.R. 53:

Objections to a magistrate's decision must be filed within fourteen days of the date on which the decision was filed. Errors contained in a magistrate's decision are properly addressed by the trial court and should not be raised for the first time on appeal. Further, if an appellant does timely file objections to the magistrate's decision, which are overruled by the trial court, he cannot appeal from the magistrate's decision. Rather, he should appeal from the trial court judgment entry adopting that decision.

2001-T-0024 STATE OF OHIO, Plaintiff-Appellee v. JON R. DAUGHERTY, Defendant-Appellant.

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

CRIMINAL LAW/EVIDENCE:

Evid.R. 614(B) provides that a trial court may interrogate a witness in an impartial manner. Absent a showing of bias, prejudice, or prodding of the witness to elicit partisan testimony, it is presumed that the trial court interrogated the witness in an impartial manner in an attempt to ascertain a material fact or develop the truth.

CRIMINAL LAW/SENTENCING:

If a victim's statement given pursuant to R.C. 2930.14(A) includes new material facts, the trial court cannot rely on those new facts unless it continues the sentencing proceeding or takes other appropriate action to allow the defendant an adequate opportunity to respond.

2001-T-0040 PAUL JEAN GRENGA, et al., Plaintiffs-Appellants v. EUGENE R. SMITH, et al., Defendants-Appellees.

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

APPELLATE REVIEW:

Because the civil rights claims were not properly raised in the trial court, they cannot be raised in the present appeal.

CIVIL/VENUE:

In a motion for change of venue pursuant to Civ.R. 3, the moving party bears the burden of proof.

Vague and indefinite statements made by the movant, along with other individuals, in numerous affidavits, such as they believe that the movant cannot receive a fair and impartial trial in a particular county, hardly qualifies as evidence that the movant is entitled to a change of venue under Civ.R. 3(C)(4).

2001-T-0151 ALVIN PRUITT, Relator v. STATE OF OHIO, Respondent.

Petition dismissed. See *Per Curiam* Opinion and Judgment Entry. (CHRISTLEY) (NADER) (GRENDALL)

EXTRAORDINARY WRIT:

When a prisoner has been released from jail, a writ of mandamus will not lie to compel the jailor to allow the prisoner greater access to the jail's law library.