

Court of Appeals of Ohio

Eleventh Appellate District

Diane V. Grendell
Judge

Timothy P. Cannon
Judge

Colleen Mary O'Toole
Judge

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Court Administrator/Magistrate/
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December 4, 2017

RELEASE

ASHTABULA **2017-A-0026**

JAMES M. FRANCIS, III, Plaintiff-Appellant v. STATE OF OHIO,
Defendant-Appellee.

Judgment affirmed. See Opinion and Judgment Entry. [O'TOOLE] (RICE) (GRENDALL)

CIVIL - petition for reclassification; written stipulations; Pennsylvania resident; moved to Ohio; substantial equivalence; R.C. 2950.01(A)(1)(a)(7); R.C. 2907.02(A)(1)(a), (b), (c), (2); R.C. 2907.03(A)(1)-(5); R.C. 2950.01(G)(1)(a).

GEAUGA **2016-G-0103**

STATE OF OHIO, Plaintiff-Appellee v. TYLER P. MERKLE,
Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [O'TOOLE] (RICE) (WRIGHT)
CRIMINAL LAW - sexual battery involving an underage student; Tier III sex offender; guilty plea; R.C. 2950.01(G)(1)(a); de novo review; sexual battery; R.C. 2907.03(A)(7); no violation of the equal protection clause; due process; no cruel and unusual punishment; R.C. 2953.08(G); R.C. 2929.11; R.C. 2929.12; appellant's sentence is not clearly and convincingly contrary to law.

2017-G-0116 STATE OF OHIO, Plaintiff-Appellee v. SUNY L. VICTOR, Defendant- Appellant.

Judgment affirmed. Grendell, J. concurs in judgment only. See Opinion and Judgment Entry. [O'TOOLE] (GRENDALL) (WRIGHT)

CRIMINAL LAW - post-sentence motion to withdraw no contest plea; Crim.R. 32.1; abuse of discretion standard of review; Traf.R. 10(B)(2) and (D); pro se litigant; no manifest injustice; no written transcript of plea hearing filed; no App.R. 9 equivalent.

LAKE

2017-L-031 STATE OF OHIO, Plaintiff-Appellee v. CHRISTOPHER L. SULLIVAN, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [O'TOOLE] (GRENDALL) (WRIGHT)

CRIMINAL LAW - theft from a person in a protected class; R.C. 2913.02(A)(3); R.C. 2913.02(A)(2); manifest weight of the evidence; to prove a violation of R.C. 2913.02(A)(3) the state must prove the defendant had no intention of repaying the money or performing the contract when the defendant took the money; to prove a violation of R.C. 2913.02(A)(2) the state must prove the defendant intended to deprive the owner of the money at the time the defendant exceeded the owner's scope of consent; insufficiency of the evidence.

2017-L-062 JAMES D. WOCHOLE, Plaintiff-Appellant v. VEARD WILLOUGHBY LIMITED PARTNERSHIP, et al., Defendants-Appellees.

Judgment affirmed. See Opinion and Judgment Entry. [O'TOOLE] (RICE) (GRENDALL)

TORTS - summary judgment; premises liability; tenants in an apartment building are invitees; open and obvious doctrine; darkness is an open and obvious danger; attendant circumstances; R.C. 5321.04(A) sets forth duties owed by landlords to tenant violation of which is negligence per se.

2017-L-067 ANKICA PULJIC, et al., Plaintiffs-Appellants v. STATE FARM FIRE AND CASUALTY COMPANY, Defendant-Appellee.

Judgment affirmed. See Opinion and Judgment Entry. [RICE] (GRENDALL) (WRIGHT)

CIVIL - summary judgment; home owners' insurance; basement floor; significant crack; upheaval; after storm; policy exclusions; damage resulting from water below the surface; expert testimony; subsurface water pressure; damage excluded; no renewal; decision was not a cancellation; no genuine issue of material fact.

2017-L-074 STATE OF OHIO, Plaintiff-Appellee v. GINA B. MILLER, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [RICE] (GRENDALL) (O'TOOLE)

CRIMINAL LAW - felony sentencing; 28-count indictment; plea of guilty; aggravated felony theft; felony of the second degree; eight-years imprisonment; \$1.4 million in restitution; sentence not contrary to law; trial court fully considered sentencing factors and circumstances of the charges.

2017-L-117 STATE OF OHIO, Plaintiff-Appellee v. MICHAEL J. JENKINS, Defendant-Appellant.
Appeal dismissed. See Judgment Entry. [RICE] (WRIGHT) (O'TOOLE)

PORTAGE

2016-P-0071 STATE OF OHIO, Plaintiff-Appellee v. DRESHON G. BRUMLEY, Defendant-Appellant.
Judgment affirmed. See Opinion and Judgment Entry. [RICE] (GRENDALL) (WRIGHT)

CRIMINAL LAW - kidnapping; felonious assault; domestic violence; repetitive beatings; series of days; only charged with crimes occurring on one day; sufficient, credible evidence supporting conclusion that appellant removed and restrained victim with the purpose of terrorizing her; felonious assault and domestic violence were committed separately; no merger; no plain error.

2017-P-0015 WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR FIRST FRANKLIN MORTGAGE LOAN TRUST, MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-FF6, Plaintiff-Appellee v. MICHAEL W. MCMAHON, et al., Defendants-Appellants.

Upon consideration and upon recommendation of the Administrative Counsel, the motion is granted, and this appeal is hereby dismissed. See Judgment Entry. [RICE] (WRIGHT) (O'TOOLE)

TRUMBULL

2015-T-0131 STATE OF OHIO, Plaintiff-Appellee v. AUNDRE L. ARMSTRONG, Defendant-Appellant.
Judgment affirmed. O'Toole, J., dissents with a Dissenting Opinion. See Opinion and Judgment Entry. [CANNON] (WRIGHT) (O'TOOLE)

CRIMINAL LAW - motion to vacate and set aside sentence; nunc pro tunc entry; Crim.R. 36; plea agreement; ambiguous; Crim.R. 11(C); appellant has the burden to provide a transcript; void judgment; voidable; sentences must be imposed individually for each offense; community control sanctions.

2017-T-0017 STATE OF OHIO, Plaintiff-Appellee v. RAHEEM AKEEM BRANTLEY, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [O'TOOLE] (GRENDALL) (CANNON)

CRIMINAL LAW - assault on a peace officer; resisting arrest; jury trial; sufficiency of the evidence; Crim.R. 29(A); manifest weight of the evidence.

2017-T-0029 MICHAEL DOTY, et al., Plaintiffs-Appellants v. WILLIAM POTTEIGER, et al., Defendants-Appellees.

Judgment reversed and remanded. See Opinion and Judgment Entry. [GRENDALL]

(RICE) (CANNON)

CIVIL - land installment contract; forfeiture and restitution; R.C. 5313.07 and 5313.08; exclusive remedy; down payment; fair rental value; R.C. 45313.10.

2017-T-0083 RALPH BLEVINS, Petitioner-Appellant v. CHARMAINE BRACY, WARDEN, Respondent-Appellee.

Judgment affirmed. See Opinion and Judgment Entry. [O'TOOLE] (RICE) (WRIGHT)
CIVIL - pro se petition for a writ of habeas corpus; constitutional due process claims are not cognizable in an R.C. Chapter 2725 habeas corpus action; petition is defective on its face; appellant failed to attach the necessary papers; appellant has not served his maximum sentence; appellant is not entitled to immediate release as a matter of law.