

**THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
JULY 9, 2010**

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Case Name: *State of Ohio v. Christopher C. Wells*
Case No.: Champaign App. No. 2010 CA 5
Panel: Brogan, Grady, Froelich
Author: Jeffrey E. Froelich
Summary: Trial court did not abuse its discretion in dismissing defendant's petition for post-conviction relief, without a hearing, as untimely. Defendant knew at trial that certain potential witnesses had not been called to testify on his behalf and, thus, was aware at that time of the facts supporting his petition for post-conviction relief. Defendant's appellate counsel's failure to inform defendant of post-conviction relief procedures and deadlines did not satisfy exception to untimeliness set forth in R.C. 2953.23(A)(1)(a). Judgment affirmed.

Case Name: *State of Ohio v. Charles Powell*
Case No.: Greene App. No. 2009 CA 72
Panel: Donovan, Fain, Kline
Author: Mary E. Donovan
Summary: A manifest injustice is shown and the trial court erred in denying Appellant's petition to vacate his guilty plea. Appellant's plea is vacated and the matter is remanded.

Case Name: *OH Development, LLC fka Ohio Development, LLC v. Centimark Corporation fka Northern Industrial Maintenance*
Case No.: Montgomery App. No. 23758
Panel: Donovan, Brogan, Grady
Author: Mary E. Donovan
Summary: The trial court correctly granted summary judgment in favor of Appellee on Appellant's claims for breach of warranty, breach of contract, and negligence, finding that the claims were time-barred. Judgment affirmed.

Case Name: *State of Ohio v. Olivia McGrady*
Case No.: Greene App. No. 2009 CA 60
Panel: Donovan, Fain, Kline
Author: Mary E. Donovan
Summary: Evidence in the record establishes that appellant's guilty pleas were made knowingly, intelligently, and voluntarily. Trial court did not abuse its discretion when it denied appellant's motion to withdraw her guilty pleas. Appellant's failure to object to imposition of greater than minimum sentence waived consideration of this assigned error on appeal. Judgment affirmed.

Case Name: *James Louis Middleton, et al. v. Meijer, Inc., et al.*
Case No: Montgomery App. No. 23789
Panel: Donovan, Brogan, Grady
Author: James A. Brogan
Summary: Trial court erred in granting summary judgment to defendant where plaintiff slipped and fell in clear liquid laundry detergent on floor in defendant's store and jury could find from the undisputed facts that defendant store was aware of the presence of the liquid in time to have cleaned it up before plaintiff fell in it. Judgment Reversed and Remanded. (Grady, J., concurring) (Donovan, P.J., dissenting).

Case Name: *State of Ohio v. Scott Chessman*
Case No: Montgomery App. No. 23412
Panel: Brogan, Grady, Froelich
Author: James A. Brogan
Summary: Ohio's Sex Offender Registration and Notification Act does not provide a penalty for violating the prohibition in R.C. 2950.05(F)(1) against failing to provide notice of a change in identifiers under R.C. 2950.05(D), so failing to provide such notice cannot be a criminal offense under Ohio law. The trial court erred by not dismissing the indictment against Appellant charging him with failure to provide notice of a change in telephone numbers. Judgment Reversed and Vacated.

Case Name: *Dorothy L. Weatherspoon v. Frank B. Weatherspoon*
Case No: Montgomery App. No. 23393
Panel: Fain, Froelich, Willamowski
Author: Mike Fain
Summary: Trial court erred in finding that divorce plaintiff had exercised reasonable diligence in locating defendant before serving defendant by publication, and therefore denying defendant's motion for relief from judgment under Civ. R. 60(B). Decision is against the manifest weight of the evidence. This is the rare case where the finder of fact lost its way in resolving conflicting evidence, resulting in a miscarriage of justice. Reversed and Remanded.

Case Name: *State of Ohio v. Ronald Dudley*
Case No: Montgomery App. No. 22931
Panel: Donovan, Brogan, Fain
Author: Mike Fain
Summary: Assuming that trial counsel should have filed a motion to suppress the defendant's statements to police, the defendant was not prejudiced by the failure to file a motion, because the statements would have been admissible on rebuttal to impeach the defendant's claim that the victim consented to sexual contact and conduct. Trial counsel did not render ineffective assistance in failing to object to separate sentences imposed for rape and kidnapping. Although these crimes are allied offenses of similar import, they were committed with a separate animus. Trial counsel should have objected to the imposition of separate sentences for gross sexual imposition and two counts of attempted rape, since these crimes are allied offenses with rape, and were not committed with a separate animus. Reversed and Remanded solely for a new sentencing hearing, at which the State may elect the allied offense on which it wishes to proceed.

Case Name: *Bill Durell, et al. v. Spring Valley Township Board of Zoning Appeals, et al.*
Case No: Greene App. No. 09-CA-69
Panel: Donovan, Fain, Kline
Author: Mike Fain
Summary: Trial court erred when it dismissed an administrative appeal, sua sponte, based upon administrative appellants' failure to file a brief timely under the trial court's local rules, without first having given the administrative appellants notice of its intent to do so, and an opportunity to respond. Trial court did not commit plain error when it dismissed an accompanying declaratory judgment action, upon motion by the defendants, and without a response by the plaintiffs, upon the ground that the complaint does not set forth a challenge to the constitutionality of the zoning. Affirmed in part, Reversed in part, and Remanded.

Case Name: *Maudy Jackson v. Lawrence J. Greger, Esq., et al.*
Case No: Montgomery App. No. 23571
Panel: Fain, Froelich, Willamowski
Author: Mike Fain
Summary: The trial court did not err in rendering summary judgment against the plaintiff on her legal malpractice claim against attorneys who had represented her in state court on charges of resisting arrest. In a subsequent federal court action, the city and its police officers asserted collateral estoppel as a defense to excessive force claims, based on plaintiff's prior guilty plea in state court to the charges of resisting arrest. Assertion of the collateral estoppel defense should

have alerted a reasonable person of the need to investigate remedies against the attorney who had represented plaintiff in the state court criminal action. Because plaintiff failed to file a legal malpractice action within one year following the assertion of the collateral estoppel defense, her claim against her attorneys is barred by the statute of limitations. Plaintiff's contention that the trial court should have rendered summary judgment in her favor on the legal malpractice claim is moot. Affirmed.

Case Name: *State of Ohio v. Stephen A. Kropff*
Case No.: Montgomery App. No. 23255
Panel: Fain, Grady, Froelich
Author: Thomas J. Grady
Summary: Trial court erred, per *State v. Bodyke*, when it denied Defendant's challenge to his reclassification as a Tier II sex offender. Reversed.

Case Name: *State of Ohio v. Richard Mark Roberts*
Case No.: Montgomery App. No. 23684
Panel: Donovan, Fain, Kline
Author: Roger L. Kline
Summary: Defendant's conviction for failure to notify in violation of R.C. 2950.05(A) and (F)(1) is vacated pursuant to the Ohio Supreme Court's decision in *State v. Bodyke*, 2010-Ohio-2424.