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Ohio Fifth District Court of Appeals Case Summaries

Case Type	Case Caption	Case No(s)	Character of Proceeding	Judgment	Topics and Issues	Author	Date of Judgment Entry
Probate	IN RE: GUARDIANSHIP OF NEHEMIAH PAUL BARRETT	Case No. 25-COA-004	Appeal from the Ashland County Court of Common Pleas, Probate Division, Case No. 20232014	Reversed and Remanded	Probate court abused its discretion in failing to conduct hearing and providing notice to ward and net of kin regarding a modification of guardianship Kershner appealed the January 14, 2025 Judgment Entry from the Ashland County Probate Court appointing Attorney David M. Hunter as guardian of both the person and estate of her adult son, Nehemiah Paul Barrett, who was found incompetent due to mental impairment. Kershner and her husband initially applied to be guardians, but the court found them unsuitable after discovering Kershner's prior rape conviction and false statements on the application. Although Hunter was later appointed as guardian of the person, he requested and was granted expanded authority over the estate without a hearing or notice to the Ward or Appellant. Kershner argued this violated due process rights, as Ohio law requires notice and a hearing before modifying guardianship. The appellate court agreed, ruling the trial court erred in failing to follow statutory requirements, and reversed the judgment, remanding the case for further proceedings.	Hoffman, P.J.	7/29/2025
Criminal	STATE VS. CAMERON MOORE	Case No. 24CA000023	Appeal from the Knox County Court of Common Pleas, Case No. 24CRB080173	Affirmed	Anders; Plea; Sentence Moore appealed his conviction and sentence from the Knox County Court of Common Pleas following his guilty plea to two counts of aggravated murder related to a double homicide during an aggravated burglary. In exchange for the guilty plea, the State dismissed the death penalty specifications, and Moore was sentenced to life without parole on each count, to be served consecutively. Moore's appellate counsel filed an Anders brief, asserting the appeal was frivolous but requesting the court review the record. Moore was notified of his right to file a pro se brief but did not do so. Upon independent review, the appellate court found that Moore's guilty plea complied with Criminal Rule 11 and that the jointly recommended sentence was lawful and not subject to review. The court concluded there were no arguable issues for appeal, granted counsel's motion to withdraw, and affirmed the trial court's judgment.	King, J.	7/29/2025
Criminal	STATE VS. JAMES K. BISHOP	Case No. 2025 CA 0012	Appeal from the Richland County Court of Common Pleas, Case No. 2023-CR0948R	Affirmed	Extortion; Coercion; Speedy trial; Vindictive prosecution; Insufficient evidence: Jury instructions; Ineffective assistance of counsel Bishop appeals his conviction and 66-month sentence for intimidation and extortion after sending a letter to a judge—one of the victims—threatening to release a false video involving the judge's wife unless the judge recused himself. At trial, Bishop represented himself and later admitted uncertainty about the woman's identity. The jury found him guilty, and the appellate court affirmed, rejecting all seven of his claims, including violations of speedy trial rights, prosecutorial vindictiveness, and ineffective counsel. The court found sufficient evidence supported the charges and that no legal errors occurred during the trial.	Hoffman, J.	7/29/2025
Criminal	STATE VS. SAVIER SMILEY	Case No. 2024 CA 00146	Appeal from the Stark County Court of Common Pleas Court, Case No. 2023 CR 2445	Affirmed	Self-defense and maximum sentences Smiley was indicted for fatally shooting his mother's fiancé, Dontae Crayton, during a domestic altercation. Though he claimed self-defense, the jury found him guilty of involuntary manslaughter, aggravated assault, and having a weapon while under disability. The appellate court upheld the convictions, finding that the evidence did not support a reasonable or honest belief of imminent danger, especially since Crayton was unarmed and the force used was excessive. Smiley also challenged his maximum sentence, but the court affirmed it, citing his criminal history and violent behavior while in jail, and finding the trial court properly applied Ohio's sentencing laws.	Popham, J.	7/29/2025
Criminal	STATE V. BRANDON BENSON	Case No. 24CA000042	Appeal from the Cambridge Municipal Court, Guernsey County , Ohio, Case No. TRC 2003387	Affirmed	Probable cause to arrest or OVI Benson was stopped by Trooper Tyler McKee for speeding and tinted windows. Upon the stop, Trooper McKee observed signs of impairment including bloodshot, glassy eyes, the smell of alcohol, Benson's admission to drinking beer and taking Vicodin, and alcohol containers in the vehicle. Benson was unable to produce a driver's license, which was later confirmed to be suspended. After conducting field sobriety tests, which showed multiple indicators of impairment, Benson was arrested and charged with OVI, driving under suspension, and speeding. Benson filed a motion to suppress, arguing lack of probable cause for the arrest, but the trial court denied the motion, citing sufficient evidence under the totality of the circumstances. Benson pleaded no contest, was found guilty, and appealed the suppression ruling. The appellate court affirmed the trial court's decision, finding that Trooper McKee had probable cause based on credible and competent evidence.	Montgomery, J.	7/30/2025

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Criminal	STATE V. MEGAN COCHRAN	Case No. 24 CAA 12 0105	Appeal from the Delaware County Court of Common Pleas, Case No. 24 CRI 02 0100	Affirmed	Not guilty by reason of insanity Megan Cochran was arrested after pointing a gun at her husband, forcing him into the basement, and attempting to flee with their son. Her husband called 911 while watching her via doorbell camera remove bags from the house and prepare her firearm. In jail, Cochran became violent, threatening self-harm, assaulting officers, and biting one. She was indicted on multiple charges, including kidnapping with a firearm, abduction, domestic violence, aggravated menacing, and assault. At trial, she pled Not Guilty by Reason of Insanity, but the court rejected the defense, finding expert testimony showed she understood the wrongfulness of her actions. Cochran was sentenced to 13 to 17 years and appealed. The appellate court upheld the trial court’s findings, ruling that the NGRI denial was supported by credible evidence and that her convictions for domestic violence and aggravated menacing did not merge with kidnapping because they involved separate harms. Both assignments of error were overruled.	Montgomery, J.	7/31/2025
Criminal	STATE V. RICHARD SCOTT MANSON	Case No. 2024 CA 00205	Appeal from the Stark County Canton Municipal Court, Case No. 2024 CRB 1598	Affirmed	Ineffective assistance claim; targeting trial counsel's failure to challenge two jurors is rejected where the record fails to show that the jurors were actually biases against the defendant Manson, a longtime Canton resident, was cited in 2020 for 18 building code violations on his property, including issues with the roof, siding, windows, and porch. Although he made partial repairs over the next few years, the city deemed the property unsafe in 2024, filed a criminal complaint, and a jury found Manson guilty of failing to comply with the notice of violation; he now appeals the conviction. Manson argued that his trial counsel was ineffective for failing to challenge two jurors during voir dire who he claimed were biased. The appellate court rejected this claim, finding that the jurors’ comments—about neighborhood standards and appropriate government involvement—were general and tentative, lacked any clear sign of actual bias, and were followed by assurances that they could be fair and impartial. Because both jurors stated they would apply the law and deliberate without prejudice, and their views were not comparable to more extreme examples of actual bias found in other cases, the court held that Manson failed to demonstrate either deficient performance or prejudice. His conviction was therefore affirmed.	Gormley, J.	7/31/2025
Criminal	STATE V. JOHN S. PICARD	Case No. 2025-CA-0015	Appeal from the Richland County Court of Common Pleas, Case No. 2009-CR-0111	Affirmed	Post-conviction petition Picard was convicted in two consolidated cases involving multiple counts of sexual battery against juvenile victims and sentenced to 40 years in prison, with post-release control. After multiple appeals and postconviction motions, some convictions were reversed for insufficient evidence, leading to a partial resentencing in 2013, followed by a 2017 nunc pro tunc entry to address a procedural issue under Crim.R. 32. Picard continued to challenge his convictions and sentences in both state and federal courts, but his claims—arguing ineffective counsel, insufficient evidence, and sentencing errors—were consistently rejected, with courts finding them barred by res judicata or not meeting legal thresholds for successive petitions, and his most recent 2025 motion to vacate his sentence was again denied for those same reasons. The trial court properly treated the appellant’s motion as an untimely and successive petition for postconviction relief under R.C. 2953.21 and 2953.23. Because the motion was filed years after the statutory deadline and appellant failed to demonstrate either that he was unavoidably prevented from discovering new facts or that a new retroactive constitutional right applied, the court lacked jurisdiction to consider the petition. Appellant misunderstood prior rulings by the Sixth Circuit and this Court, erroneously claiming his sentences were “merged” and that no final appealable orders existed; both assertions were rejected as inaccurate and legally unsupported. Since valid sentencing entries exist in both cases and appellant previously litigated or could have litigated these claims, the trial court correctly applied the doctrine of res judicata and overruled all of appellant’s assignments of error.	Popham, J.	7/31/2025
Criminal	STATE V. MARCUS PITTS	Case No. CT2025-0044	Appeal from the Muskingum County Court of Common Pleas, Case No. 2023-0130	Affirmed	Indictment was not deficient The court indicted Pitts on one count of aggravated trafficking in drugs in violation of R.C. 2925.03, one count of aggravated possession of drugs in violation of R.C. 2925.11, and two counts of having weapons while under disability in violation of R.C. 2923.13. Pitts pled guilty to the possession count with a major drug offender specification and one of the weapons counts. Pitts claims the trial court erred in denying his motion to dismiss because his indictment was deficient and therefore, the trial court lacked jurisdiction over his case. Pitts’ arguments are barred by res judicata. Pitts could have challenged the indictment in his direct appeal when he challenged his consecutive sentence, but he failed to do so. Pitts never objected to the indictment or raised the issue of a deficient indictment until his motion to dismiss, almost one year after his resentencing.	King, J.	7/31/2025

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Criminal	STATE V. MATTHEW D. HUPP	Case No. 24CA000036	Appeal from the Guernsey County Court of Common Pleas, Case No. 24 CR 086	Affirmed	Sentencing Hupp was indicted on multiple drug-related charges and tampering with evidence, later pleading guilty to several counts. He was sentenced to an aggregate of seventy-two months in prison, which included corrections made during a second sentence hearing to address a mistake regarding one count's sentence length. Hupp appealed, arguing the second hearing should have been de novo, but the appellate court disagreed, noting the trial court properly corrected the sentence and allowed both parties to be heard. The appellant's sole assignment of error was overruled, and the original judgment was upheld.	Baldwin, P.J.	7/30/2025
Criminal	STATE V. STANLEY T. CURRY	Case No. 24 CA A 12 0104	Appeal from the Delaware County Court of Common Pleas, Case No. 23 CR I 06 0334	Affirmed	Trial court did not err in concluding that a traffic stop for a speeding offense was proper where the vehicle's speed was determined through the "pacing" method Curry argued that the stop was improper because the deputy used the "pacing" method to estimate his speed, which he claimed was unreliable. However, the court found that the deputy's pacing, supported by his cruiser's speedometer and video evidence, was a valid method to determine Curry was speeding. The court concluded that the traffic stop was justified based on reasonable suspicion of a speeding violation, and the subsequent discovery of firearms and illegal drugs during the stop was lawful.	Gormley, J.	7/30/2025
Juvenile	IN RE: A.S.	Case No. 25 CA 00015	Appeal from the Licking County Court of Common Pleas, Juvenile Division, Case No. F2024-0302	Affirmed	Permanent custody appeal; Trial court properly concluded that child's father, who had been incarcerated at the time of the child's birth and who was unable to maintain a significant period of sobriety outside of prison, was not able to provide a permanent home for the special needs child The father appealed the Licking County Juvenile Court's decision granting permanent custody of his daughter, A.S., to the county's Department of Job and Family Services, arguing that the Agency failed to make reasonable efforts to reunify them and wrongly determined that A.S. could not or should not be placed with him. The appellate court rejected these claims, finding that the Agency was not required to attempt reunification due to the father's prior involuntary loss of custody of A.S.'s sibling and his abandonment of A.S. Evidence showed he had never met A.S., was incarcerated at her birth, and failed to maintain contact. The court also found multiple statutory factors supporting that A.S. could not be safely placed with him, including his lack of commitment, repeated incarceration, and prior termination of parental rights. The court affirmed the lower court's decision.	Gormley, J.	7/29/2025
Juvenile	IN RE: E.T.S., Q.T.S., Z.T.S.	CASE NOS. 2025 CA 22 2025 CA 23 2025 CA 24	Appeal from the Richland County Court of Common Pleas, Juvenile Division, Case Nos. 2021 DEP 00068, 2021 DEP 00069, 2021 DEP 00072	Affirmed	Permanent custody; Trial court properly concluded that mother had not made sufficient progress in resolving her mental-health issues and was continuing to live in an unsafe home, and those factors and others justified granting permanent custody to children's services agency In this permanent-custody appeal, the mother challenged the Richland County Juvenile Court's decision to grant permanent custody of her three children — E.T.S., Q.T.S., and Z.T.S. — to the Richland County Children Services Board, arguing she had made significant progress on her case plan. However, the appellate court affirmed the judgment, citing serious concerns including a sibling's physical abuse, father's ongoing anger issues and criminal behavior, mother's inability to manage the children's violent behavior during visits, her intellectual limitations, and her continued relationship with father, which endangered the children. The children had been in agency custody for over three years, exceeding the statutory time requirement, and had grown emotionally distant from their parents, expressing a desire to remain with their foster caregivers. Given that both prongs of the statutory permanent-custody test were met, the court found no error in the termination of the mother's parental rights.	Gormley, J.	7/28/2025
Juvenile	IN RE: G.Z.	Case No. 25CA005	Appeal from the Holmes County Court of Common Pleas, Juvenile Division, Case No. 24 N 111	Reversed and Remanded	Neglected and dependent child The biological father of G.Z. appealed the trial court's finding that G.Z. was a neglected and dependent child. G.Z., who has been in his father's sole care since his parents separated, exhibited emotional and behavioral issues at school, including aggression, defiance, and tantrums, though teachers also noted improvements over time. A therapist diagnosed G.Z. with PTSD, attributing it primarily to the father's rigid and sometimes harsh parenting style, including spanking and using a rubber belt on rare occasions. However, there was no evidence that the father failed to provide basic needs or necessary services for G.Z., nor did the Agency show how G.Z.'s behavior significantly deviated from that of other children his age. The expert's conclusions were largely speculative, and the Agency did not establish by clear and convincing evidence that the father's parenting caused sufficient harm to warrant state intervention. The appellate court found that the trial court's findings of neglect and dependency were unsupported by the evidence and reversed the adjudications.	Baldwin, P.J.	7/29/2025

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Domestic Relations	JENNIFER HITCHCOCK VS. ANDREW HITCHCOCK	Case No. 2025 AP 04 0015	Appeal from the Tuscarawas County Court of Common Pleas, Case No. 2018TC030108	Affirmed	Denial of motion to change parental rights and responsibilities; No change in circumstances; Allocation of related fees Following their 2019 divorce, the parties initially shared parenting of their child, but in 2022, they agreed to terminate the shared plan, naming mother as legal custodian and primary residential parent, with father receiving visitation. A series of motions followed between 2022 and 2024 regarding custody, visitation, schooling, and parental responsibilities. Father sought custody based on concerns about mother's behavior, while mother requested changes to visitation and a psychological evaluation of father. After a hearing, the magistrate denied both parents' motions to significantly alter parental rights, made a minor change to visitation, awarded mother \$500 in attorney fees due to father's frivolous filing, and split guardian ad litem fees beyond father's \$1,500 deposit. The trial court upheld these findings, with a minor modification in father's favor regarding the visitation exchange point. Father appealed, raising ten assignments of error, including that the court failed to find a change in circumstances or award him custody, erred in awarding attorney fees, mishandled issues involving guardian ad litem fees, mother's alleged conduct, school placement, and the psychological evaluation cost. The appellate court affirmed the trial court's judgment in full, finding that father failed to present new or substantiated evidence of a change in circumstances and that the trial court acted within its discretion in all rulings.	King, J.	7/29/2025
Civil	ROBERT GATES VS. JUDGE CURT WERREN; PROBATE DIVISION, STARK COUNTY	Case No. 2025CA00070	Stark County Writ of Prohibition	Dismissed	Writ of Prohibition Gates filed a petition for a writ of prohibition against Judge Curt Werren of the Stark County Probate Division, seeking to prevent the judge from exceeding his jurisdiction in a guardianship case involving Gates' mother, Charlotte G. Schleg. Gates, identifying himself as an interested party, alleged that the guardian submitted filings referencing an unrelated individual, introducing prejudicial information into the record. He challenged Judge Werren's actions regarding the guardianship and potential land sale. However, the court found that Judge Werren has exclusive subject-matter jurisdiction over guardianships and related land matters under R.C. 2101.24 and R.C. 2127. As Gates failed to state a valid claim for prohibition relief, the court granted Judge Werren's motion to dismiss.	King, J.	7/29/2025

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