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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
Criminal	STATE VS. SCOTT A. BUCKIUS	Case No. 24CA000033	Appeal from the Guernsey County Court of Common Pleas, Case No. 24CR000038	Affirmed	Possession of a controlled substance; tampering with evidence The appellant was indicted on five charges: aggravated trafficking in methamphetamine and aggravated possession of methamphetamine, both second-degree felonies; tampering with evidence, a third-degree felony; and possession and trafficking of a fentanyl-related compound, both fourth-degree felonies. The court imposed an aggregate prison term of 12 to 14 years, including 4 years of mandatory time. On appeal, the appellant argued that the tampering with evidence conviction was against the manifest weight and sufficiency of the evidence. However, because the appellant had pled guilty to that charge as part of a negotiated plea agreement, this challenge was deemed waived.	Popham, J.	5/28/2025
Criminal	STATE VS. WILLIAM ACKER CRIM AKA WILLIAM ACKER-CRIM	Case No. 24-COA-024	Appeal from the Ashland County Court of Common Pleas, Case No. 23-CRI-218	Affirmed	Allied offenses; consecutive sentences William Acker-Crim pled guilty to seven counts of unlawful sexual conduct with a minor involving repeated sexual acts with his girlfriend's 14-year-old daughter. He was sentenced to 10.5 years in prison, with each count receiving 18 months to be served consecutively. On appeal, he argued the offenses should have merged, his attorney was ineffective for not seeking merger, and the sentence was excessive. The Fifth District affirmed, finding the acts occurred separately, involved different conduct and harm, and that the trial court properly supported its consecutive sentencing decision.	King, J.	5/28/2025
Criminal	STATE VS. JAMES A.R. JONES	Case No. CT2025-0032	Appeal from the Muskingum County Court of Common Pleas, Case No. CR2022-0201	Affirmed	Denial of successive motion to withdraw plea Jones had initially pleaded guilty in 2022 to one count of engaging in a pattern of corrupt activity and four counts of robbery, receiving a jointly recommended sentence of 15 to 20.5 years. He later sought to withdraw his plea, claiming ineffective assistance of counsel and, more recently, alleging that his signature had been forged on the plea documents. The trial court rejected these claims, finding no manifest injustice, and emphasized that Jones had previously raised similar arguments which had been resolved through prior appeals. The appellate court agreed, ruling that the trial court did not abuse its discretion in denying the motion without a hearing, noting that the newly claimed forgery was unsupported and barred by res judicata, as it could have been raised earlier. The court also stressed that pro se litigants must still comply with procedural rules and cannot introduce new evidence or arguments on appeal that were not part of the trial court record.	Popham, J.	5/27/2025
Criminal	STATE VS. MICHAEL D. JONES	Case No. 2024 CA 00144	Appeal from the Stark County Court of Common Pleas, Case No. 2007-CR-0544	Affirmed in part; Reversed in part; Remanded	Post-conviction DNA test request Jones had been convicted in 2007 of rape, kidnapping, and robbery and sentenced to 22 years in prison. In 2024, he sought DNA testing on several items, including a flashlight, the victim's clothing, bicycle handlebar grips, and samples from a rape kit and oral swabs. The trial court denied his application, ruling that the requested testing would not be outcome determinative. The appellate court agreed in part, affirming that testing on the flashlight, clothing, and bicycle grips would not have changed the outcome since the jury had already convicted him despite the lack of DNA evidence linking him to these items. However, the court reversed the trial court's ruling regarding the rape kit and oral swabs, concluding that the recovery of a third party's male DNA from these samples could create a strong probability of acquittal when considered alongside all other admissible evidence. As a result, the case was remanded for further proceedings to allow DNA testing of the sexual assault evidence.	Popham, J.	5/27/2025
Criminal	STATE VS. DION JOHNSON	Case No. 2024CA00123	Appeal from the Stark County Court of Common Pleas, Case No. 2024-CR-0229	Affirmed	Rejecting sufficiency and manifest weight challenges to conviction on strangulation and other criminal charges Johnson argued that his strangulation conviction lacked sufficient evidence and that all convictions were against the manifest weight of the evidence. The appellate court affirmed the judgment. They found the victim's testimony, her injuries, and Johnson's own statements provided sufficient evidence for the strangulation charge. The court also determined the convictions were not against the manifest weight of the evidence, given the victim's ability to function despite intoxication and the consistency of her injuries with her account.	Gormley, J.	5/29/2025
Criminal	STATE VS. MUREL D. PARKS, JR.	Case Nos. 2025 CA 0002 : 2025 CA 0003	Appeal from the Coshocton County Court of Common Pleas, Case Nos. 25 CR 0028 and 25CR 0029	Affirmed	Anders; consecutive sentences Parks appealed his convictions where he had pleaded guilty to two counts of aggravated trafficking in methamphetamine, both with forfeiture specifications. The court sentenced him to two years in one case and an indefinite term of seven to ten and a half years in the other, to be served consecutively and also consecutive to a prior Muskingum County sentence. Parks' appellate counsel filed an Anders brief, asserting there were no meritorious issues for appeal but requesting the court review the trial court's imposition of consecutive sentences. Parks was informed of his right to file a pro se brief but did not do so. The appellate court found that the trial court followed the correct legal standards and made the necessary findings under Ohio law to justify consecutive sentencing, noting Parks' extensive criminal history and that the sentences were not disproportionate. The court agreed that no non-frivolous issues existed, granted counsel's motion to withdraw, and affirmed the trial court's judgment.	King, J.	5/30/2025

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Criminal	STATE VS. DANIEL BRUCE HIMEBAUGH	Case No. 24-CA-00012	Appeal from the Perry County Court of Common Pleas, Case No. 24-CR-0018	Affirmed	Anders; guilty plea; Crim.R. 11 Himebaugh appealed his conviction following his guilty plea to a charge of having weapons while under disability. Although the parties had jointly recommended community control, the court sentenced Himebaugh to 24 months in prison. His appointed counsel later filed an Anders brief, asserting the appeal was frivolous, and moved to withdraw. Counsel identified two potential issues: whether Himebaugh's plea was made knowingly and voluntarily, and whether the trial court erred by not clearly stating it was not bound by the plea agreement. After reviewing the record, the appellate court found the trial court complied with the necessary requirements for accepting a guilty plea under Crim.R. 11, and Himebaugh had been adequately informed—both orally and in writing—that the sentencing recommendation was not binding. Himebaugh did not file a pro se brief, and the court concluded there were no meritorious issues for appeal. The court granted counsel's request to withdraw and affirmed the trial court's judgment.	King, J.	5/30/2025
Criminal	STATE VS. JACOB MCQUEEN	Case No. 24CA000024	Appeal from the Knox County Court of Common Pleas, Case No. 23CR08-0204	Affirmed	Anders plea; guilty plea; sentencing Jacob McQueen appealed his conviction and sentence for felonious assault after pleading guilty in the Knox County Common Pleas Court. The charges arose from an August 2023 incident in which McQueen fled from police and injured an officer during a struggle, causing permanent nerve damage. He was indicted on multiple charges but pleaded guilty to felonious assault in exchange for dismissal of the others. Although both sides recommended a sentence of four to six years, the court imposed six to nine years after informing McQueen it was not bound by the recommendation. On appeal, McQueen's attorney filed a motion to withdraw under Anders v. California, stating the appeal was without merit. The appellate court reviewed the case and found the plea was properly entered, the sentence fell within legal limits, and the court followed the required sentencing guidelines. Finding no arguable grounds for appeal, the court granted counsel's motion to withdraw and affirmed the trial court's judgment.	Hoffman, J.	5/30/2025
Probate	IN THE MATTER OF THE ADOPTION OF: A.K.H. & S.R.H.	Case Nos. 25CA005 25CA006	Appeal from the Coshocton County Court of Common Pleas, Probate Division, Case Nos. 20245009, 20245010	Reversed and Remanded	Probate court's judgment in adoption case overturned where trial court judge did not address mother's request for appointed counsel before approving adoption The biological mother of A.K.H. and S.R.H. appealed the Coshocton County Probate Court's decision granting adoption without her consent. She argued the court violated her constitutional right to counsel by denying her request for appointed representation and proceeding with the hearing in her absence. The Fifth District agreed, finding the mother had not knowingly, voluntarily, or intelligently waived her right to counsel. The court reversed the adoption decision and remanded the case for further proceedings.	Gormley, J.	5/27/2025
Domestic Relations	JENNIFER MILLER VS. CHRISTOPHER MILLER	Case No. 24 CAF 05 0030	Appeal from the Delaware County Court of Common Pleas, Domestic Relations Division Case No. 19 DR A 08 0424	Affirmed	Domestic relations; affirming trial court's granting of motion in limine excluding untimely expert report; denying motion to continue trial, and findings on separate marital property, spousal support; and attorney's fees Christopher R. Miller appealed the Delaware County Domestic Relations Court's divorce judgment, challenging rulings on property division, spousal support, attorney's fees, and pretrial evidentiary exclusions. The court excluded his expert's report for being filed late and denied his request to continue the trial. It found he failed to prove that various assets, such as, real estate, brokerage accounts, a 401(k), and restricted stock were separate property. The court also ordered him to pay \$85,000 in attorney's fees and initially set spousal support, later terminated. The Fifth District affirmed, finding no abuse of discretion in any of the trial court's decisions	Gormley, J.	5/23/2025
Domestic Relations	ROBIN HESLOP VS. CHRISTOPHER HESLOP	Case No. 2024 AP 06 0022	Appeal from the Tuscarawas County Court of Common Pleas, Case No. 2016 TC 09 0405	Affirmed	Rule 60(B) Motion for relief from judgment Robin Heslop appealed the Tuscarawas County Court of Common Pleas' judgment, challenging the denial of her motions for relief from a child support termination order and a judgment entry concerning child support modification. The trial court had approved the termination of child support for one child and adopted a magistrate's decision regarding child support modification. The appellate court reviewed the trial court's adoption of the magistrate's decision under an abuse-of-discretion standard. The court found that Heslop's arguments, including claims of mistake and due process violations, were without merit and that her motions were not filed within a reasonable time. The Fifth Appellate District affirmed, finding no abuse of discretion in the trial court's decisions	Montgomery, J.	5/29/2025
Civil	COLONEL ERIC Z. HURST VS. AFRIQUE PETERS	Case No. 2024 CA 00045	Appeal from the Fairfield County Municipal Court, Case No. 23 CVG 1776	Reversed and Remanded	Trial court can consider the sealing of eviction records under Sup.R. 45 Afrique Peters appealed the denial of her motion to seal an eviction filing record, a case initiated by Colonel Eric Z. Hurst and later dismissed. The appellate court reversed the trial court's decision, confirming that Sup.R. 45(E) applies to eviction actions, allowing for public access restriction. However, the court affirmed that a hearing on such a motion is discretionary, not mandatory. The case was remanded for further proceedings.	King, J.	5/30/2025

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Civil	ROBERT MCGUIRE, ET AL. VS. CITY OF MANSFIELD, ET AL.	Case Nos. 2024 CA 0071 2024 CA 0072	Appeal from the Richland County Court of Common Pleas, Case No. 2023-CV-0132R	Reversed	Summary judgment; firefighters/police/City have immunity Robert and Amber McGuire's appeal, stemming from their lawsuit alleging willful and/or wanton misconduct by the City of Mansfield, its firefighters, and a police officer during an emergency medical response to Robert McGuire's asthma attack, was reversed. During ambulance transport, McGuire became agitated and uncooperative, leading to his handcuffing by Officer Korey Kaufman at the hospital, after which McGuire appeared unresponsive. The court found no genuine issues of material fact regarding the appellants' immunity. It ruled that the firefighters' actions, which included administering a DuoNeb treatment and immediate transport, did not constitute willful or wanton misconduct. Similarly, the court concluded that Officer Kaufman's actions in subduing McGuire for medical treatment were not wanton or reckless, as he was unaware of McGuire's breathing issues and responded to an emergency situation. Consequently, all appellants were granted immunity under R.C. 2744 and R.C. 4765.49.	King, J.	5/30/2025
Civil	MARK H. GILLIS VS. DELAWARE COUNTY BOARD OF REVISION, DELAWARE COUNTY AUDITOR AND OHIO TAX COMMISSIONER, APPELLEES, AND RUSHMORE OH PARTNERS, LLC, APPELLANT	Case No. 24 CAH 10 0071	Appeal from the Ohio Board of Tax Appeals , Case No. 2023-1475	Dismissed	Final Appealable Order Rushmore OH Partners, LLC appealed a Board of Tax Appeals (BTA) interim order denying its request for a protective order in a property tax dispute initiated by Mark H. Gillis. Rushmore argued the complaint lacked jurisdiction and that discovery would expose sensitive business information. The Fifth District dismissed the appeal, finding the BTA's interim order was not final or appealable because it did not compel disclosure of confidential materials or resolve a provisional remedy. The court concluded it lacked jurisdiction until a final order is issued.	Baldwin, P.J.	5/30/2025
Civil	MARK H. GILLIS, APPELLEE VS. DELAWARE COUNTY BOARD OF REVISION, OLENTANGY LOCAL SCHOOLS BOARD OF EDUCATION, DELAWARE COUNTY AUDITOR AND OHIO TAX COMMISSIONER, APPELLEES, AND POWELL GRAND COMMUNITIES, LLC, APPELLANT	Case No. 24 CAH 11 0099	Appeal from the Ohio Board of Tax Appeals , Case No. 2024-0880	Dismissed	Final Appealable Order Powell Grand Communities, LLC appealed a Board of Tax Appeals (BTA) interim order denying its request for a protective order in a property valuation dispute initiated by Mark H. Gillis. The company argued that the underlying complaint lacked jurisdiction and that discovery would expose sensitive business information. The Fifth District dismissed the appeal, holding the BTA's order was not a final appealable order because it did not compel production of confidential materials or resolve a provisional remedy. The court concluded it lacked jurisdiction until a final order is issued.	Baldwin, P.J.	5/30/2025
Civil	MARK H. GILLIS, APPELLEE VS. DELAWARE COUNTY BOARD OF REVISION, OLENTANGY LOCAL SCHOOLS BOARD OF EDUCATION, DELAWARE COUNTY AUDITOR AND OHIO TAX COMMISSIONER, APPELLEES, AND NORTHLAKE SUMMIT LLC, APPELLANT	Case No. 24 CAH 11 0100	Appeal from the Ohio Board of Tax Appeals , Case No. 2024-0881	Dismissed	Final Appealable Order Northlake Summit LLC appealed a Board of Tax Appeals (BTA) interim order denying its motion for a protective order in a property valuation dispute initiated by Mark H. Gillis. Northlake argued the underlying tax complaint lacked jurisdictional basis and that discovery would expose sensitive business information. The Fifth District dismissed the appeal, holding the BTA's order was not a final appealable order because it did not compel the production of confidential materials or resolve a provisional remedy. The court concluded it lacked jurisdiction until a final order is issued.	Baldwin, P.J.	5/30/2025