

**THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
JULY 23, 2010**

These case summaries are issued for the convenience of the public, the bench and the bar. They are a brief statement of the holding of the court in the matter noted. They are not to be considered headnotes or syllabi. Readers may obtain copies of an opinion from the particular county's clerk of courts. The full text of each opinion is also available at the Ohio Supreme Court Website at www.sc.ohio.gov

FILED ON MONDAY, JULY 19, 2010:

Case Name: *State of Ohio v. Johnny D. Green*
Case No.: Montgomery App. Nos.23326, 23307
Panel: Donovan, Grady, Ringland
Author: Thomas J. Grady
Summary: Because Defendant's reclassification as a Tier II sex offender is unconstitutional, per *State v. Bodyke*, his failure to comply with the registration and notification requirements resulting from his reclassification is not criminal conduct for which Defendant may be found guilty. Convictions reversed and Defendant discharged.

FILED ON TUESDAY, JULY 20, 2010:

Case Name: *Raymond J. Johnson v. SK Tech, Inc., et al.*
Case No.: Montgomery App. No. 23522
Panel: Donovan, Brogan, Froelich
Author: James A. Brogan
Summary: The trial court erred in affirming the administrative denial of the appellant's claim for unemployment compensation. The appellant is entitled to unemployment benefits because he was not fired for just cause within the meaning of Ohio's unemployment compensation laws. The trial court did not err in entering summary judgment against the appellant on his complaint against his former employer. Judgment affirmed in part, reversed in part, and cause remanded for payment of unemployment compensation. (Donovan, P.J., concurs in part and dissents in part; Froelich, J., concurs separately).

Case Name: *State of Ohio v. Donald F. Scott*
Case No: Montgomery App. No. 23565
Panel: Brogan, Grady, Froelich
Author: James A. Brogan
Summary: Since appellant was classified as a Tier II sexual offender by the trial court, *State v. Bodyke*, ___ Ohio St.3d ___, 2010-Ohio-2424 has no application to him. His challenges to the constitutionality of S.B. 10 are without merit. Judgment Affirmed.

FILED ON THURSDAY, JULY 22, 2010:

Case Name: *State of Ohio, ex rel., Paul and Ginger Gerhardt v. City of Springfield, Ohio, City Commission, et al.*
Case No: Clark App. No. 2010 CA 27
Panel: Donovan, Fain, Froelich
Author: Per Curiam
Summary: Relators failed to demonstrate that Respondents, the City Commission of Springfield, Ohio and the city commissioners individually, had a clear legal duty to initiate appropriation proceedings for the alleged taking of Relators' property. The conduct alleged to constitute a taking was that of the United States of America, not of Respondents. Petition for writ of mandamus denied.

FILED ON FRIDAY, JULY 23, 2010:

Case Name: *State of Ohio v. James D. Williams*
Case No: Montgomery App. No. 23650
Panel: Brogan, Fain, Froelich
Author: Mike Fain
Summary: In prosecution for Aggravated Arson and Murder, the State presented sufficient evidence to establish that the defendant knowingly caused physical harm to an occupied structure. If the State were required to prove that a reasonable person in the defendant's position would know that a person was likely to be present in the structure he set on fire, the evidence in this record is sufficient to prove that proposition of fact beyond reasonable doubt to a reasonable finder of fact. Affirmed.

Case Name: *State of Ohio v. Joseph A. Richardson*
Case No.: Montgomery App. No. 23647
Panel: Donovan, Fain, Grady
Author: Mary E. Donovan
Summary: Record reveals no arguably meritorious issues for appellate review. [Anders brief]. Judgment affirmed.

Case Name: *State of Ohio v. Titus Brewer*
Case No: Montgomery App. No. 23442
Panel: Brogan, Fain, Froelich
Author: Mike Fain
Summary: Assuming, for purposes of appeal, that police officer simply read from her police report at trial, without objection, that cannot be deemed to rise to the level of plain error, since an objection to this procedure, had an objection been interposed, may have led to a foundation being laid for a proper use of the report to refresh the officer's recollection, under Evid. R. 612, or for the admission of the report under past recollection recorded, under Evid. R. 803(5).

Trial counsel was not ineffective for having failed to move to suppress evidence of field sobriety testing in OMVI prosecution. Officer's trial testimony indicates that she had a reasonable and articulable suspicion of impairment, based upon her observations before she subjected defendant to field sobriety tests, sufficient to justify their imposition. Therefore, it is not likely that the evidence would have been suppressed, had trial counsel made a motion to suppress.

Affirmed.

Case Name: *State of Ohio v. Anthony Wilson*
Case No: Montgomery App. No. 23313
Panel: Donovan, Grady, Ringland
Author: Robert P. Ringland
Summary: Appellant's request for access to public records pursuant to R.C. 149.43(B)(8) was properly denied as appellant failed to establish that such records were necessary to support a justiciable claim. Judgment affirmed.

Case Name: *State of Ohio v. Mandale Bates*
Case No.: Clark App. No. 2009 CA 106
Panel: Brogan, Grady, Froelich
Author: Jeffrey E. Froelich
Summary: Trial court did not abuse its discretion in denying defendant's petition for post-conviction relief without a hearing. Although the trial court apparently found that defendant was unavoidably prevented from discovering the facts supporting his petition in a timely manner, the court did not abuse its discretion in concluding that the new information was insufficient to justify a hearing on whether defendant met the second requirement under R.C. 2953.23(A)(1)(b), i.e., that, if not for his trial counsel's alleged failure to obtain the police report, no reasonable factfinder would have found him guilty. Judgment affirmed.

Case Name: *State of Ohio v. Dennis R. Gibson, Jr.*
Case No.: Champaign App. No. 2009 CA 47
Panel: Brogan, Grady, Froelich
Author: Jeffrey E. Froelich
Summary: Trial court properly concluded that defendant's sexual offender classification would not be affected by the validity of his sentence for underlying convictions and was not void. Judgment affirmed.

Case Name: *Elijah Council v. Charstine Council*
Case No.: Montgomery App. No. 23514
Panel: Brogan, Grady, Froelich
Author: Jeffrey E. Froelich
Summary: Trial court did not err in denying defendant-wife's motion for a continuance, which was requested on the morning of the final hearing. There had been several prior continuances, the case was more than a year old, and the record does not reflect any reason for the request that would make the denial an abuse of discretion. Trial court did not violate wife's right to due process by requiring her to appear that same afternoon; wife had no reasonable basis to believe she was not required to appear at the hearing as originally scheduled in the absence of a ruling by the court that the continuance was granted. Trial court did not deny wife the benefit of counsel by denying the motion for a continuance. Judgment affirmed.

Case Name: *State of Ohio v. James C. Carr, Jr.*
Case No.: Montgomery App. No. 23445
Panel: Brogan, Grady, Froelich
Author: Thomas J. Grady
Summary: Claim of ineffective assistance of counsel as grounds for post-conviction relief is not demonstrated and/or barred by res judicata. Affirmed.

Case Name: *State of Ohio v. Kermeth Madison Cochran, III*
Case No.: Champaign App. No. 09CA0024
Panel: Brogan, Grady, Froelich
Author: Thomas J. Grady
Summary: Trial court did not abuse its discretion when it imposed the maximum eighteen month available prison term for Defendant's fourth-degree felony offense of arson; trial court could rely on the blue book value of the car that Defendant set on fire to determine the victim's economic loss; and, trial court did not abuse its discretion when, following his conviction, the court declined to continue Defendant's bond pending sentencing. Affirmed.

Case Name: *Brian D. Cassell, et al. v. Gary Nasal, et al.*
Case No.: Miami App. No. 09CA27
Panel: Brogan, Grady, Froelich
Author: Thomas J. Grady
Summary: Per *State v. Bodyke*, the trial court erred when it denied Plaintiffs' petition for a declaration that R.C. 2950.031 and 2950.032 are unconstitutional; judgment reversed.

Case Name: *Mary Lou Plummer v. Joseph L. Plummer*
Case No.: Montgomery App. No. 23743
Panel: Brogan, Grady, Froelich
Author: Thomas J. Grady
Summary: Domestic relations court did not abuse its discretion in ordering a new QDRO, having found a QDRO the court had approved is inconsistent with a division of retirement benefits ordered in a decree of divorce; being void for that inconsistency, the QDRO was not subject to relief ordered pursuant to Civ.R. 60(B), but could be vacated by the court in an exercise of its inherent powers. Affirmed. (Froelich, J., concurs in judgment.)