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Ohio Fifth District Court of Appeals Case Summaries

Case Caption	Case No(s)	Character of Proceeding	Judgment	Topics and Issues	Author	Date of Judgment Entry
State v. Williams	2025-CA-00129	Appeal from the Stark County Court of Common Pleas, Case No. 2025-CR-0864-B	Affirmed	Sufficiency/Manifest Weight Virgil Lee Williams appealed his Stark County convictions for felonious assault, discharge of a firearm on or near prohibited premises, having weapons while under disability, and accompanying firearm and repeat violent offender specifications, arguing that the evidence was insufficient and that his convictions were against the manifest weight of the evidence. The charges arose from an April 12, 2025 shooting near the Shorb Drive Thru in Canton, where two men fired multiple shots at a passing vehicle. Although no eyewitness identified Williams; surveillance footage showed two suspects before and during the shooting, Williams's GPS records placed him near the scene at the time, investigators identified him through facial-recognition software and comparisons with CJIS, OHLEG, and Facebook photographs, clothing recovered from the residence where he was arrested matched the surveillance footage, and a Glock 19 recovered there was linked by ballistics to six shell casings from the shooting. The appellate court acknowledged weaknesses in the identification evidence but held that circumstantial evidence has the same probative value as direct evidence and that the cumulative evidence was sufficient for a rational jury to find Williams guilty beyond a reasonable doubt. The court also concluded that the jury did not clearly lose its way or create a manifest miscarriage of justice in weighing the evidence. Accordingly, both assignments of error were overruled and the trial court's judgment, including Williams's aggregate sentence of 16 to 20 years, was affirmed.	Popham	8/17/2026
Rudy v. Apple Valley Property Owners Assn.	25CA000021	Appeal from the Knox County Court of Common Pleas, Case No. 24 IN 05-0177	Reversed and Remanded	Deed Restrictions; Short-Term Rentals Rhonda Watt, Alan Rudy, and Kevin Runyon appealed the Knox County Court of Common Pleas' decision granting summary judgment to the Apple Valley Property Owners Association (AVPOA) and ordering them to stop using their properties as short-term rentals. The appellate court held that the subdivision's Residential Declaration, which permits residential use but prohibits business or commercial enterprises "on said premises," does not expressly or implicitly prohibit short-term rentals. The court emphasized that renters continue to use the homes for residential purposes, such as sleeping, eating, and cooking, and that rental transactions occur off-site; moreover, the AVPOA's pre-2024 Bylaws expressly contemplated short-term rentals through Airbnb and VRBO and had consistently permitted the homeowners' rentals. Because restrictive covenants must be strictly construed against restrictions on property use, the AVPOA could not create a new short-term-rental prohibition through a Bylaw amendment when the restriction was not contained in the Declaration. The court also determined that the other Apple Valley homeowners were not necessary parties to the declaratory judgment action and that the AVPOA breached its contractual obligations by attempting to impose the restriction through the Bylaws. However, factual issues remained concerning damages, specific performance, attorney fees, costs, and whether a permanent injunction was necessary. Accordingly, the homeowners' assignment of error was sustained, the trial court's judgment was reversed, and the case was remanded for further proceedings.	Popham	8/17/2026
State v. Cosavage	2026CA00039	Appeal from the Stark County Common Pleas Court, Case No. 2021 CR 2758	Affirmed	Petition for postconviction relief; Untimely filed Defendant-appellant Floyd J. Cosavage, Jr. appealed the Stark County Court of Common Pleas' dismissal of his petition for postconviction relief, arguing that the trial court improperly reclassified his motion to vacate a void judgment as a postconviction petition and failed to address his claims concerning subject-matter jurisdiction, double jeopardy, and the validity of the proceedings. Cosavage was originally convicted in 2022 after pleading guilty to failure to comply with a police order or signal following a high-speed motorcycle chase and did not appeal. He later filed a postconviction petition in April 2024, which was dismissed as untimely, and did not appeal that decision. In December 2025, he filed another motion challenging the court's jurisdiction and seeking dismissal, which the trial court properly reclassified as a postconviction petition because its substance raised a constitutional double-jeopardy claim and sought to vacate his conviction and sentence. The appellate court held that the petition was untimely because it was filed well beyond the 365-day deadline under R.C. 2953.21 and was also a successive petition. Because Cosavage did not attempt to satisfy the exceptions for untimely or successive petitions under R.C. 2953.23(A), the trial court lacked jurisdiction to consider the merits. The court therefore overruled all four assignments of error and affirmed the judgment.	Montgomery	8/17/2026
State v. Harvey	2026 CA 00041	Appeal from the Licking County Court of Common Pleas, Case No. 2013 CR 00351	Dismissed	Denial of post conviction motion to seal record Dustin Harvey appealed the trial court's May 4, 2026, judgment denying his motion to seal materials related to his request to reverse his 2013 convictions for rape and gross sexual imposition. Although Harvey's notice of appeal specifically identified the May 4 judgment denying his Motion to Seal, his appellate brief instead argued that his original trial was unfair and that prosecutorial misconduct, ineffective assistance of counsel, and judicial error warranted reversal of his convictions. The appellate court explained that under App.R. 3(D), an appeal is limited to the judgment identified in the notice of appeal, and assignments of error must relate to that judgment. Because none of Harvey's arguments addressed the denial of his Motion to Seal, the issues he raised were outside the scope of the appeal. The court therefore concluded that it lacked jurisdiction to consider his assignments of error and dismissed the appeal.	Baldwin	8/17/2026



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State v. Willey	CT2026-0017	Appeal from the Muskingum County Court of Common Pleas, Case No. CR2025-0679	Affirmed/ Reversed in Part and Remanded	Mandatory sentences imposed in error, consecutive service properly imposed Defendant-Appellant Brian Willey appealed his January 28, 2026 sentence from the Muskingum County Court of Common Pleas after pleading guilty to two burglary counts with firearm specifications, grand theft of a firearm, theft, and tampering with evidence. The trial court imposed an aggregate ten-year prison term and classified eight years as mandatory. Willey argued that only the two one-year firearm specifications were subject to mandatory prison time and that the trial court improperly imposed consecutive sentences. The Fifth District Court of Appeals agreed that the trial court erred in classifying eight years as mandatory, explaining that although the burglary offenses required prison terms because they carried firearm specifications, only the two years imposed for the firearm specifications were mandatory; the underlying burglary sentences were not automatically mandatory. The court therefore reversed and remanded for the trial court to redetermine the mandatory status of the burglary sentences. However, the court rejected Willey's challenge to consecutive sentencing, finding that the trial court made and incorporated the findings required by R.C. 2929.14(C)(4). Accordingly, the judgment was affirmed in part, reversed in part, and remanded for resentencing on the mandatory status of the underlying burglary terms.	King	8/17/2026
In re K.S.	2026CA00052	Appeal from the Court of Common Pleas of Stark County , Juvenile Division, Case No. 2024JCV01469	Affirmed	The trial court properly awarded permanent custody of a mother's minor child to a county children's services agency. Appellant Alyissa B. appealed the Stark County Court of Common Pleas, Juvenile Division's judgment awarding permanent custody of her son, K.S., to Stark County Job and Family Services. K.S. was removed from Alyissa's care shortly after birth after testing positive for amphetamines, fentanyl, and cocaine, and the Agency developed a case plan requiring parenting and substance-use assessments, compliance with recommendations, and random drug testing. Alyissa failed to timely complete the assessments, repeatedly tested positive for multiple substances, stopped participating in drug testing, was arrested and convicted of drug-related offenses, and only began significant treatment shortly before the permanent-custody hearing. The trial court found under R.C. 2151.414(E)(1) that Alyissa had continuously and repeatedly failed to substantially remedy the conditions that caused K.S.'s removal and determined that K.S. could not be returned to her within a reasonable time. The Fifth District Court of Appeals found clear and convincing evidence supporting that determination, noting that Alyissa's recent efforts at treatment were too limited and belated to demonstrate substantial remediation. The court also upheld the trial court's finding that permanent custody was in K.S.'s best interest, emphasizing the child's need for stability, his strong bond with his foster family, his significant medical needs, and Alyissa's continuing substance-abuse issues. The court rejected her arguments for a six-month extension or relative placement and concluded that both statutory prongs for permanent custody were satisfied. Accordingly, the court affirmed the judgment terminating Alyissa's parental rights and awarding permanent custody of K.S. to the Agency	Gormley	8/17/2026
State v. King	26CA000005	Appeal from the Guernsey County Cambridge Municipal Court, Case No. CRB2500541	Reversed and Remanded	The trial court, before designating as a tier-I sex offender a 19-year-old defendant who committed the R.C. 2907.04(A) offense of unlawful conduct with a minor, should have considered whether the minor with whom the defendant engaged in that conduct did or did not consent to it. If the conduct was consensual, the defendant's conduct would not qualify as a sexually oriented offense, and he would not be subject to the registration and verification requirements in R.C. Chapter 2950. Defendant-Appellant Aden King appealed the trial court's decision requiring him to register as a Tier I sex offender after he pled no contest to misdemeanor unlawful sexual conduct with a minor under R.C. 2907.04(A). King was 19 years old when he engaged in sexual conduct with a minor who was several months shy of age 16, making the offense subject to the sex-offender registration provisions of R.C. Chapter 2950 only if the minor "did not consent." The trial court concluded that anyone under 16 is legally incapable of consenting and therefore automatically classified King as a Tier I sex offender. The appellate court disagreed, holding that R.C. 2950.01(A)(2) requires a factual determination of whether the 13-, 14-, or 15-year-old minor actually consented, because otherwise the statute's express "did not consent" language and its exemption for consensual sexual conduct would be meaningless. Accordingly, the court reversed King's Tier I sex-offender designation and remanded the case for the trial court to determine whether the minor consented to the sexual conduct, which will determine whether King is required to register as a sex offender.	Gormley	8/17/2026



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State v. Driver	26 CAA 03 0028	Appeal from the Court of Common Pleas of Delaware County , Case No. 25 CRI 11 0748	Reversed and Remanded	Because the trial court, when imposing prison terms at the defendant's sentencing hearing in this felony case, failed to advise him, in accordance with R.C. 2929.19(B)(2)(f), about the possible additional prison time that he could face if he later violates any conditions of post-release-control supervision, the sentence was contrary to law. The case is remanded so the judge, at the new sentencing hearing, can provide to the defendant the required information about the possible prison-related consequences of any post-release-control violations. Defendant Kevin Driver appealed his sentence after pleading guilty to five fourth-degree felony identity-fraud charges and receiving prison terms on each count. Although the trial court advised Driver at sentencing that he could be placed on up to two years of discretionary post-release control (PRC), it failed to inform him that violating PRC conditions could result in additional prison time of up to one-half of his original prison term, as required by R.C. 2929.19(B)(2)(f) and R.C. 2967.28(F)(3). The Fifth District Court of Appeals held that the sentencing-hearing advisement was incomplete and that the written plea agreement and sentencing entry, which contained the required information, could not cure the trial court's failure to provide the advisement orally at sentencing. The court therefore reversed the judgment and remanded for a limited resentencing hearing solely to advise Driver of the possible additional prison term for violating PRC conditions, while leaving the remainder of his sentence undisturbed.	Gormley	8/17/2026
State v. Pitts	CT2026-0033	Appeal from the Muskingum County Court of Common Pleas, Case No. CR2025-0774	Affirmed	Maximum consecutive sentence was properly imposed Defendant-Appellant Brandon Pitts appealed his March 17, 2026 sentence from the Muskingum County Court of Common Pleas after pleading guilty to amended charges of third-degree felony burglary and fourth-degree felony attempted abduction. The trial court imposed maximum sentences of 36 months and 18 months, respectively, to be served consecutively for an aggregate 54-month prison term. Pitts argued that the maximum consecutive sentences should be vacated, but the Fifth District Court of Appeals rejected his claim. The court found that both sentences were within the applicable statutory ranges, that the trial court properly considered the purposes and principles of felony sentencing and the seriousness and recidivism factors under R.C. 2929.11 and R.C. 2929.12, and that the sentences were not based on impermissible considerations. The court also determined that the trial court made and incorporated the required R.C. 2929.14(C)(4) findings supporting consecutive sentences, including Pitts's significant criminal history and continued criminal conduct while incarcerated. Because the record supported the sentence and it was not clearly and convincingly contrary to law, the court overruled Pitts's sole assignment of error and affirmed the trial court's judgment.	King	8/17/2026
State v. Bollar	2026CA00065	Appeal from the Stark County Court of Common Pleas, Case No. 2019-CR-1620	Affirmed	Post-conviction relief Defendant-Appellant Marquis Bollar appealed the March 12, 2026 judgment of the Stark County Court of Common Pleas denying his pro se motion to vacate his sentence, arguing that his firearm specifications were improperly stacked and that the trial court improperly used a nunc pro tunc entry. The court rejected Bollar's first assignment of error, holding that his challenge to the consecutive firearm specifications had already been decided by the Ohio Supreme Court, which held that R.C. 2929.14(B)(1)(g) required separate prison terms for the applicable firearm specifications; therefore, the law-of-the-case doctrine barred reconsideration. The court also determined that Bollar's motion was, despite its title, an untimely petition for postconviction relief, filed well beyond the statutory deadline without satisfying any exception under R.C. 2953.23, and that his sentencing claim was further barred by res judicata. Regarding the nunc pro tunc entry, the court found that although the trial court appeared to use it for clarification rather than correction of a clerical error, the entry accurately reflected the sentence originally imposed, did not alter the aggregate prison term, and caused Bollar no prejudice. Accordingly, both assignments of error were overruled and the judgment of the trial court was affirmed.	King	8/20/2026
State v. Cosavage	2025CA00179	Appeal from the Stark County Canton Municipal Court, Case No. 2024TRC5726	Affirmed	Jurisdiction may be raised at any time Defendant-appellant Floyd J. Cosavage, Jr. appealed the Canton Municipal Court's denial of his motion to withdraw his guilty plea, vacate the judgment, and dismiss the case for lack of jurisdiction. Cosavage had originally been charged with OVI refusal and failure to control, but after failing to appear for a scheduled suppression hearing, a bench warrant was issued. Following his later arrest on an unrelated matter, he was returned to Stark County, where he entered a guilty plea to amended Count 1, physical control while under the influence, and was sentenced to 180 days in jail and a \$250 fine. He did not timely appeal his conviction, and his subsequent attempts to withdraw his plea and challenge the court's jurisdiction were unsuccessful, with an earlier appeal dismissed for failure to prosecute. In his present appeal, Cosavage raised nine assignments of error concerning jurisdiction, due process, right to counsel, the voluntariness of his plea, the trial court's failure to hold an evidentiary hearing, alleged defects in the judgment entry, and the legality of his sentence. The Fifth District Court of Appeals held that his claims were barred by res judicata because they either had been raised or could have been raised previously, and it further found that the Canton Municipal Court had subject-matter jurisdiction and that Cosavage was properly before the court after being returned pursuant to the valid bench warrant. The court therefore overruled all nine assignments of error and affirmed the judgment of the Canton Municipal Court.	Hoffman	8/20/2026



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State v. Needels	26 CAA 02 0015 26 CAA 02 0016	Appeal from the Delaware County Court of Common Pleas, Case Nos. 19 CRI 09 0640 20 CRI 03 0160	Affirmed	Revocation of Community Control Defendant-appellant Ryan Needels appealed the Delaware County Court of Common Pleas' decision revoking his community control in two prior theft cases and imposing consecutive prison terms of 12 months and 18 months. Needels had originally been placed on community control after receiving Intervention in Lieu of Conviction, but his community control was later revoked based on new criminal convictions, failure to report, and failure to make required restitution payments. Although this Court previously vacated his admissions to the violations because they were partly based on guilty pleas in a separate case that were themselves vacated, the trial court conducted a new hearing and again revoked community control, finding Needels no longer amenable to supervision. On appeal, Needels argued that res judicata barred the new revocation, that the court improperly relied on his failure to pay restitution without proof of willful nonpayment, and that the consecutive sentences were unsupported and unlawful. The Fifth District Court of Appeals rejected all three arguments, finding the prior remand authorized a new community-control hearing, the evidence showed Needels failed to make required restitution payments while not incarcerated and had also committed new offenses, and the trial court properly considered the statutory sentencing factors and made the required findings for consecutive sentences. The court therefore overruled all assignments of error and affirmed the judgment of the trial court.	Hoffman	8/20/2026