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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. Higgins	26-CA-00005	Appeal from the Perry County Court of Common Pleas, Case No. 23-CR-0018	Affirmed in part; Dismissed in part	Person in prison ("PIP") (denial of motion for leave for delayed discovery) Arthur R. Higgins II appealed the Perry County Court of Common Pleas' March 4, 2026 decision denying his pro se motion for leave to file a delayed discovery request under Crim.R. 16 and Brady v. Maryland. Higgins argued that the prosecution improperly designated certain discovery materials concerning minor victims as "counsel only" without the required certification and that the trial court should have held a Crim.R. 16(F) hearing. The Fifth District Court of Appeals rejected this argument, explaining that the materials had been available to Higgins's trial counsel, no objection to the designation was made before trial, and the issue was not raised on direct appeal; therefore, the claim was barred by res judicata because it could have been raised previously. Higgins also argued that his trial counsel was ineffective for failing to challenge the "counsel only" designation, but the appellate court dismissed that assignment of error because it addressed an issue unrelated to the March 4, 2026 judgment from which Higgins appealed. Accordingly, the court overruled the first assignment of error, dismissed the second for lack of jurisdiction, and affirmed the trial court's judgment.	Baldwin	9/28/2026
State v. Drake	2026 CA 0020 2026 CA 0021	Appeals from the Court of Common Pleas of Richland County , Case Nos. 2026 CR 0058 N 2025 CR 0731 N	Affirmed in Part, Reversed in Part, and Remanded	When sentencing a criminal defendant on two felony charges, the trial judge permissibly imposed a prison term on one charge and a community-control sentence on the other charge. The judge rightly delayed the starting date for the supervision period in the community-control case until the prison term is finished, but the judge had no authority in that case to direct the defendant to spend time in a community-based correctional facility immediately after the prison term. Gregory Drake appealed the sentences imposed after he pleaded guilty to two fifth-degree felony aggravated-possession-of-drugs charges in separate cases. In one case, the trial court sentenced Drake to 12 months in prison, while in the other it imposed five years of community control and ordered him to serve several months in a community-based correctional facility (CBCF) after completing the prison term. The Fifth District Court of Appeals held that the trial court properly delayed the commencement of Drake's community-control period until he completed the prison sentence, reasoning that Ohio law requires community control to toll while an offender is confined and that a person cannot simultaneously serve community control while incarcerated. However, the court concluded that the trial court lacked authority to order Drake to serve a CBCF term consecutively after his prison sentence because a CBCF placement constitutes a sentence of imprisonment and Ohio law generally requires such terms to run concurrently absent a statutory exception, none of which applied. The court therefore affirmed the prison sentence, reversed the community-control judgment in part, and remanded that case for removal of the CBCF term. Judge King concurred that the CBCF placement was improper but dissented from the majority's conclusion regarding delayed commencement of community control, reasoning that the statutes permit tolling only after community control has already begun and do not expressly authorize postponing its start until completion of another prison term.	Gormley	9/28/2026
State v. Caughenbaugh	2026 CA 00037	Appeal from the Licking County Municipal Court, Newark, Ohio, Case No. 24-TRC-09733	Affirmed	Motion to suppress; Remand; Officer credibility; Dash cam video evidence; Reasonable and articulable suspicion; Probable cause; Traffic stop; Traffic infraction or traffic code violation The State of Ohio appealed the Licking County Municipal Court's decision granting Kori Caughenbaugh's motion to suppress evidence after an Ohio State Highway Patrol sergeant stopped her for allegedly crossing the double yellow center line. Although Sergeant Joshua Carte testified that he clearly observed Caughenbaugh's vehicle cross the center line, the dashcam video and photographs did not clearly corroborate the alleged violation. After multiple appeals and remands, the trial court ultimately found Carte's testimony not credible and concluded that the State failed to establish probable cause or reasonable, articulable suspicion for the stop. The Fifth District Court of Appeals affirmed, emphasizing that although an officer's observation of a traffic violation ordinarily provides probable cause for a non-investigatory traffic stop, the trial court is the finder of fact at a suppression hearing and is entitled to determine witness credibility. Because the trial court expressly rejected Carte's testimony and the video evidence did not independently establish a traffic violation, there was no remaining evidence supporting the stop. The court therefore overruled the State's sole assignment of error and affirmed the suppression ruling.	Montgomery	9/28/2026



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Gillis v. Delaware Cty. Bd. of Revision	25 CAH 11 0101 25 CAH 11 0102 26 CAH 02 0014	Appeals from the Ohio Board of Tax Appeals, Case Nos. 2023-1476 2023-1477 2023-1475	Affirmed	Under the version of R.C. 5715.19(A)(6) in effect for tax year 2022, the Ohio Board of Tax Appeals (BTA) properly found that a third-party complainant who sought an increase in the taxable values of three multimillion-dollar apartment buildings had no obligation to immediately prove to the county board of revision or to the BTA that the recent ownership transfers of those buildings qualified as arm's-length sales and that the sale prices met the high-dollar requirements in the statutory provision. Instead, the BTA rightly permitted the complainant to conduct discovery and to gather additional evidence, and that evidence in turn supports the BTA's conclusion that the apartment buildings' values should be adjusted upward to the recent sale prices. Northlake Summit LLC, Powell Grand Communities LLC, and Rushmore OH Partners LLC appealed Ohio Board of Tax Appeals (BTA) decisions increasing the taxable values of their Delaware County apartment properties by millions of dollars based on challenges filed by attorney Mark Gillis under R.C. 5715.19(A)(6). The property owners argued that Gillis's complaints should have been dismissed because, when they were filed, he could not prove that the properties had recently been sold in qualifying arm's-length transactions exceeding the auditor's values by at least 10% and \$500,000. The Fifth District Court of Appeals rejected that argument, holding that the statute required Gillis to allege the jurisdictional facts but did not require him to possess and immediately prove the supporting evidence at the time of filing. The court concluded that the BTA properly permitted discovery, through which Gillis obtained purchase agreements and settlement documents establishing that the sales satisfied the statutory thresholds. The court also upheld the BTA's determination that the transactions qualified as arm's-length sales even though they involved transfers of membership interests in the property-owning entities, reasoning that the agreements and settlement statements demonstrated that the transactions were effectively sales of the underlying real estate under Palmer House. Because the property owners presented no evidence showing that portions of the sale prices should be allocated to personal property or intangibles, the BTA properly treated the full sale prices as evidence of the properties' taxable value. The court therefore affirmed the BTA's decisions increasing the values of all three properties. Judge King dissented, maintaining that the phrase "shall not file" in R.C. 5715.19(A)(6) required a third-party complainant to establish the qualifying sale with competent evidence when filing the complaint and that the BTA could not use discovery to create jurisdiction that had not been properly invoked.	Gormley	9/28/2026
State v. Rishel	25-COA-037	Appeal from the Ashland County Ashland Municipal Court, Case No. 25-CR-B-123	Affirmed	The trial court's decision to exclude some proposed expert testimony will not be overturned where the record contains neither a proffer of the proposed testimony nor an expert report. And the defendant's conviction on a misdemeanor sexual-imposition charge is affirmed where (1) the State presented sufficient evidence that sexual contact had occurred and (2) the jury's guilty verdict is not against the manifest weight of the evidence. Bryce Rishel appealed his Ashland Municipal Court conviction for misdemeanor sexual imposition, arguing that the trial court improperly excluded expert testimony concerning his autism and social difficulties and that the State presented insufficient and unpersuasive evidence of his guilt. The Fifth District Court of Appeals affirmed the conviction, first holding that Rishel failed to preserve his evidentiary challenge because he did not make an offer of proof or provide an expert report showing what the proposed testimony would have established. The court also found the evidence legally sufficient because the alleged victim testified that Rishel hugged her from behind, touched her in multiple inappropriate areas, and lifted her while she screamed and pushed him away; the court concluded that the circumstances permitted the jury to infer the required sexual purpose even though the evidence of intent was circumstantial. The court further determined that the conviction was not against the manifest weight of the evidence because the jury was entitled to believe the victim's testimony, consider corroborating evidence from her younger brother and other witnesses, and reject Rishel's characterization of the encounter as merely an awkward side hug. Finally, because the court found no individual errors, it rejected Rishel's cumulative-error argument and affirmed the judgment.	Gormley	9/28/2026
Wisdom v. Oscar's Towing & Recovery	2026CA00129	Appeal from the Court of Common Pleas of Stark County , Case No. 2026CV00774	Affirmed	The trial court properly granted the defendant towing company's motion to dismiss the plaintiff's complaint concerning towing and vehicle-storage fees where the allegations in that complaint, even if true, did not allege any claims on which relief could be granted. Plaintiff Yalanda Wisdom appealed the dismissal of her complaint against Oscar's Towing & Recovery after the company refused to release her vehicle until she paid accumulated towing and storage fees. Wisdom argued that Oscar's Towing charged excessive storage fees, violated a Canton Municipal Court vehicle-release order, and converted her property. The appellate court affirmed the dismissal, first noting that although Wisdom's pro se brief failed to comply with several appellate rules, the court could discern her arguments and therefore reviewed the appeal. The court held that the Ohio Administrative Code provision limiting towing and storage fees did not apply because Wisdom's vehicle had been towed from a public roadway rather than private property, and she failed to allege any of the specific "major violations" identified in R.C. 4513.611. The court also found that the municipal court's order releasing the vehicle did not address towing or storage fees and could not deprive the towing company, which was not a party to the traffic case, of its asserted property interest. Finally, Wisdom's conversion claim failed because she had not paid the towing and storage charges, and under R.C. 4513.61(C)(2), she was responsible for those expenses; therefore, Oscar's continued possession of the vehicle was not inconsistent with her ownership rights. Accordingly, the court affirmed the Stark County Court of Common Pleas' dismissal of Wisdom's complaint.	Gormley	9/29/2026



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In re S.S.	2026CA00069	Appeal from the Stark County Common Pleas Court, Family Court Division, Case No. 2024JCV01191	Affirmed	Permanent custody; Abandonment of child; Child cannot be placed with parent within a reasonable time; Best interest Father E.F. appealed the Stark County Common Pleas Court's decision awarding permanent custody of his daughter, S.S., to the Stark County Department of Job and Family Services. The child was removed from the home because of poor living conditions, drug use, and other safety concerns, while Father was a registered sex offender who refused to complete the required sex-offender risk assessment, failed to participate in his case plan, had no contact with the caseworker, did not attend hearings after the initial shelter-care hearing, and had not visited S.S. since before the case began. The trial court found that Father had abandoned the child, that S.S. could not be placed with him within a reasonable time, and that permanent custody was in the child's best interest. On appeal, Father argued that the evidence was insufficient to support those findings, but the appellate court disagreed. It held that Father's failure to visit S.S. for more than 90 days established abandonment under R.C. 2151.011(C), and his failure to participate in services or maintain contact with the child or agency supported the finding that reunification was not possible within a reasonable time. The court also found permanent custody was in S.S.'s best interest because she had significant cognitive, behavioral, and mental-health needs, had experienced six placements, and had improved with intensive treatment, while there was no evidence of a meaningful bond with Father because he never visited her. The appellate court therefore overruled Father's assignment of error and affirmed the permanent-custody judgment.	Montgomery	9/29/2026
State v. Kennedy	2026CA00053	Appeal from the Stark County Court of Common Pleas, Case No. 2015CR0368	Affirmed	Crim.R. 32.1 Anthony Dominic Kennedy, Sr. appealed the Stark County Court of Common Pleas' denial of his post-sentence motion to withdraw his guilty plea to a 2015 domestic-violence charge. Kennedy pleaded guilty in 2015 and received three years of community control, but more than ten years later he sought to withdraw his plea, claiming actual innocence and arguing that the plea was involuntary because the victim had wanted the charges dismissed. He submitted his own affidavit, an unsworn statement attributed to the victim, and an affidavit from his mother, all asserting that Kennedy was not responsible for the victim's injuries. The appellate court affirmed the trial court's decision, holding that Kennedy failed to establish the "manifest injustice" required under Crim.R. 32.1 for a post-sentence plea withdrawal. The court found that the victim's unsworn statement was not competent evidentiary material, while Kennedy's and his mother's affidavits were self-serving, contradicted the guilty plea he had entered, and did not provide sufficient evidence of a fundamental flaw in the proceedings. The court also emphasized Kennedy's unexplained ten-year delay in seeking withdrawal, which weighed against his credibility. Finally, the court rejected his due-process argument, explaining that an evidentiary hearing was unnecessary because his materials did not establish sufficient operative facts to warrant relief, and the trial court was permitted to assess the credibility of affidavits without a hearing. Accordingly, all three assignments of error were overruled and the judgment denying Kennedy's motion to withdraw his guilty plea was affirmed.	Baldwin	9/29/2026
State v. Moon	2026CA0002	Appeal from the Coshocton County Court of Common Pleas, Case No. 2025 CR 0011	Affirmed	Ineffective assistance of counsel Burtcel A. Moon appealed his sentence following guilty pleas to four counts of aggravated trafficking in drugs. After entering his pleas, Moon failed to appear for sentencing and was later arrested; when sentencing was eventually held, defense counsel expressed concern that Moon might be experiencing substance-induced psychosis and requested a competency evaluation, but the trial court found that Moon was competent and appeared to be feigning his behavior. The court then offered counsel an opportunity to speak on Moon's behalf and personally asked Moon whether he wished to make a statement, but neither provided any mitigation. The court imposed consecutive sentences totaling 77 months, followed by an indefinite eight-to-twelve-year term on the fourth count, citing Moon's continued methamphetamine trafficking, the harm to the community, and his failure to appear for sentencing. On appeal, Moon argued that counsel was ineffective for failing to make an allocation or present mitigating arguments. The appellate court rejected the claim, finding that the trial court fully complied with Crim.R. 32(A)(1) by giving both counsel and Moon an opportunity to speak, and that even assuming counsel's performance was deficient, Moon failed to demonstrate prejudice. The court noted that the trial court had reviewed the presentence investigation, recognized that Moon had no prior felony convictions, and provided specific reasons for the sentence. Because Moon identified no additional mitigating evidence that counsel could have presented and offered only speculation that a statement might have resulted in a lesser sentence, he failed to establish a reasonable probability of a different outcome. The court therefore overruled his sole assignment of error and affirmed the Coshocton County Court of Common Pleas' judgment.	Baldwin	9/29/2026