

OHIO COURT OF APPEALS, NINTH JUDICIAL DISTRICT

State v. Callaghan

2021-Ohio-1047 (Ohio Ct. App. 2021) · No. C.A. No. 29431 · Decided March 31, 2021

SUMMARY

The Ohio Ninth District Court of Appeals reviewed David A. Callaghan's convictions and aggregate sentence following his guilty pleas to murder, tampering with evidence, gross abuse of a corpse, and domestic violence. The court upheld the guilty pleas and declined to merge the offenses, but reversed the imposition of post-release control and consecutive sentences and remanded for further proceedings.

CASE DETAILS

COURT	Ohio Court of Appeals, Ninth Judicial District
WRITING FOR THE COURT	Thomas A. Teodosio; Callahan, P.J.; Hensal, J.
JURISDICTION	Ohio
DECIDED	March 31, 2021
DOCKET	C.A. No. 29431
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a felony criminal judgment and sentence entered by the Summit County Court of Common Pleas after the defendant pleaded guilty.
STANDARD OF REVIEW	A guilty plea involving nonconstitutional Crim.R. 11 rights is reviewed for substantial compliance and prejudice. Felony sentences are reviewed under R.C. 2953.08(G)(2) and may be modified or vacated when clear and convincing evidence shows that the record does not support the statutory findings or that the sentence is otherwise contrary to law. Allied-offense merger is generally reviewed de novo, but an unpreserved claim is reviewed for plain error.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion
PARTIES	David A. Callaghan v. State of Ohio

TOPICS

- criminal procedure
- plea bargaining
- sentencing
- appellate procedure
- standard of review

PRACTICE AREAS

criminal law

criminal procedure

sentencing

appellate practice

QUESTIONS PRESENTED

1. Whether the trial court substantially complied with Crim.R. 11(C)(2)(a) when accepting Callaghan's guilty pleas despite not orally stating that the murder sentence was mandatory, that he was ineligible for community control, or the maximum fine.
2. Whether the trial court improperly imposed a mandatory five-year period of post-release control.
3. Whether the trial court committed plain error by imposing consecutive sentences without making all findings required by R.C. 2929.14(C)(4).
4. Whether the trial court committed plain error by applying the outdated *State v. Johnson* allied-offenses analysis instead of the *State v. Ruff* analysis.

HOLDINGS

1. The trial court substantially complied with Crim.R. 11(C)(2)(a), and Callaghan failed to establish reversible error in the acceptance of his guilty pleas. The written plea form, together with the plea colloquy and the totality of the circumstances, showed that he understood the mandatory prison term and maximum penalties applicable to the murder charge.
2. The trial court improperly imposed a mandatory five-year period of post-release control. The post-release-control portion of the sentence was set aside, and the case was remanded for a new sentencing hearing limited to the proper imposition of post-release control.
3. The trial court committed plain error by imposing consecutive sentences without making all findings required by R.C. 2929.14(C)(4). The consecutive sentences were reversed and the matter was remanded for resentencing.
4. Callaghan did not establish plain error in the trial court's failure to merge the offenses. Although the trial court referred to the superseded *State v. Johnson* analysis, Callaghan failed to demonstrate a reasonable probability that the convictions were allied offenses under *State v. Ruff*, and the incomplete appellate record, including the missing presentence investigation report, required affirmance.

KEY QUOTATIONS

“A word-for-word recitation of the language of the statute is not required, however, provided the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings.” (¶ 22)

“Therefore, “courts must ask three questions when [a] defendant’s conduct supports multiple offenses: (1) Were the offenses dissimilar in import or significance? (2) Were they committed separately? and (3) Were they committed with separate animus or motivation?”” (¶ 30)

FACTUAL BACKGROUND

Callaghan pleaded guilty to murder, tampering with evidence, gross abuse of a corpse, and domestic violence. The trial court sentenced him to fifteen years to life for murder, three years for tampering with evidence, one year for gross abuse of a corpse, and six months for domestic violence, with the murder and tampering sentences consecutive and the other sentences concurrent. The court also imposed a mandatory five-year period of post-release control, although the applicable offenses did not authorize that term. At sentencing, the court made some but not all findings required for consecutive sentences and stated that it had analyzed allied offenses under *State v. Johnson* rather than the later *State v. Ruff* framework.

PROCEDURAL HISTORY

Callaghan pleaded guilty to murder, tampering with evidence, gross abuse of a corpse, and domestic violence; the remaining charges were dismissed. The trial court imposed an aggregate sentence of eighteen years to life, including consecutive sentences and a mandatory five-year term of post-release control. On appeal, Callaghan challenged the validity of his plea, the post-release-control term, consecutive-sentence findings, and the allied-offenses analysis.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must conduct a new sentencing hearing limited to the proper imposition of post-release control and must resentence Callaghan after properly considering R.C. 2929.14(C)(4) and making the necessary consecutive-sentence findings. The judgment was otherwise affirmed.

CASES CITED

- *State v. Farnsworth*, 9th Dist. Medina No. 15CA0038-M, 2016-Ohio-7919
- *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748
- *State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415
- *State v. Nero*, 56 Ohio St.3d 106 (1990)
- *State v. Bailey*, 9th Dist. Summit Nos. 28003, 28004, and 28005, 2016-Ohio-4937
- *State v. Garrett*, 9th Dist. Summit No. 24143, 2009-Ohio-2339
- *State v. Straley*, 159 Ohio St.3d 82, 2019-Ohio-5206
- *State v. Tutt*, 8th Dist. Cuyahoga No. 102687, 2015-Ohio-5145
- *State v. Billenstein*, 3d Dist. Mercer No. 10-13-10, 2014-Ohio-255
- *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111
- *State v. Hudson*, 161 Ohio St.3d 166, 2020-Ohio-3849
- *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913
- *State v. Mills*, 9th Dist. Summit No. 28954, 2021-Ohio-52
- *State ex rel. Roberts v. Marsh*, 156 Ohio St.3d 440, 2019-Ohio-1569

- State v. Marcum, 146 Ohio St.3d 516, 2016-Ohio-1002
- Cross v. Ledford, 161 Ohio St. 469, 477 (1954)
- State v. Hunter, 131 Ohio St.3d 67, 2011-Ohio-6524
- State v. Grant, 9th Dist. Summit No. 29259, 2019-Ohio-3561
- State v. Morgan, 153 Ohio St.3d 196, 2017-Ohio-7565
- State v. Long, 53 Ohio St.2d 91 (1978)
- State v. Foster, 109 Ohio St.3d 1, 2006-Ohio-856
- State v. Bonnell, 140 Ohio St.3d 209, 2014-Ohio-3177
- State v. Duffy, 9th Dist. Lorain Nos. 18CA011342 through 18CA011349, 2020-Ohio-3137
- State v. Mellott, 9th Dist. Wayne Nos. 16AP0081 and 16AP0082, 2017-Ohio-7545
- State v. Thompson, 9th Dist. Wayne No. 15AP0016, 2016-Ohio-4689
- State v. Johnson, 128 Ohio St.3d 153, 2010-Ohio-6314
- State v. Ruff, 143 Ohio St.3d 114, 2015-Ohio-995
- State v. Lucas, 9th Dist. Summit No. 29077, 2019-Ohio-2607
- State v. Williams, 134 Ohio St.3d 482, 2012-Ohio-5699
- State v. Daniels, 9th Dist. Wayne No. 17AP0036, 2020-Ohio-1176
- State v. Beech, 9th Dist. Summit No. 29036, 2019-Ohio-120
- State v. Underwood, 124 Ohio St.3d 365, 2010-Ohio-1
- State v. Logan, 60 Ohio St.2d 126, 131 (1979)
- State v. Rogers, 143 Ohio St.3d 385, 2015-Ohio-2459
- State v. Snyder, 9th Dist. Summit No. 28109, 2016-Ohio-7881
- State v. Yuncker, 9th Dist. Medina No. 14CA0068-M, 2015-Ohio-3933
- State v. Daniel, 9th Dist. Summit No. 27390, 2014-Ohio-5112

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