

# Court of Appeals of Ohio

## *Eleventh Appellate District*

Cynthia Westcott Rice  
Judge

Thomas R. Wright  
Presiding/Administrative Judge

Mary Jane Trapp  
Judge

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Timothy P. Cannon  
Judge

Matt Lynch  
Judge

Shibani Sheth-Massacci  
Court Administrator/Magistrate/  
Administrative Counsel

**March 11, 2019**

**RELEASE**

### **ASHTABULA**

2018-A-0042

IN RE: T.J.T.P. AND M.A.M.P.

2018-A-0043

Judgment affirmed. See Opinion and Judgment Entry. [LYNCH] (WRIGHT) (TRAPP) JUVENILE - motion for visitation; incarcerated parent; phone visitation; presumption against visitation with incarcerated parent; failure to make factual findings; Civ.R. 52; abuse of discretion.

2019-A-0002

STATE OF OHIO ex rel. RONALD MAGBY, Relator v. JUDGE MARIANNE SEZON, Respondent.

Petition dismissed. See Per Curiam Opinion and Judgment Entry. (RICE) (LYNCH) (TRAPP)

EXTRAORDINARY WRITS - writ of mandamus; plain and adequate remedy; ordinary course of law; dismissal pursuant to Civ.R. 12(B)(6); direct appeal.

### **LAKE**

2018-L-074

U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016-CT, Plaintiff-Appellee v. MICHAEL J. BIROVSEK a.k.a. MICHAEL BIROVSEK, et al., Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [LYNCH] (WRIGHT) (TRAPP) CIVIL - foreclosure; failure to prosecute; Civ.R. 41(B)(1); default judgment; Civ.R. 55(A); timeliness; Civ.R. 6(B)(2) and 12(A)(1); excusable neglect; interlocutory order.

2018-L-077

STATE OF OHIO, Plaintiff-Appellee v. ARMANDO A. GIL, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [LYNCH] (CANNON) (TRAPP)

CRIMINAL - *Alford* plea; benefit of plea; reduced penalty; factual basis; brief description of the crimes; voluntary plea; assertion of innocence.

2018-L-085      STATE OF OHIO, Plaintiff-Appellee v. MARKUS A. SHRIVER, Defendant-Appellant.

Judgment modified and affirmed as modified. See Opinion and Judgment Entry. [CANNON] (LYNCH) (TRAPP)

CRIMINAL LAW - SENTENCING - felony sentence; seriousness and recidivism factors; R.C. 2929.12; findings supported by the record; no-contact order; community control sanction; vacated; sentence modified.

2018-L-088      STATE OF OHIO, Plaintiff-Appellee v. JOSHUA T. O'KEEFE, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [TRAPP] (WRIGHT) (LYNCH)

CRIMINAL LAW - sentencing post-Foster; felony sentencing; clear and convincing evidence contrary to law; R.C. 2929.11 and R.C. 2929.12; consistency; misdemeanor sentencing; discretion of trial court; R.C. 2929.22 factors.

2018-L-091      STATE OF OHIO, Plaintiff-Appellee v. CLIFFORD D. TAYLOR, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [LYNCH] (CANNON) (TRAPP)

CRIMINAL - postconviction relief; R.C. 2953.21; timeliness; R.C. 2953.23; irregular motions; structural error.

2018-L-123      USAA FEDERAL SAVINGS BANK, Plaintiff-Appellee v. MARCUS RICHARDSON, et al., Defendant-Appellant.

Upon recommendation of the Administrative Counsel, this appeal is hereby dismissed for appellant's failure to prosecute. See Judgment entry. [WRIGHT] (LYNCH) (TRAPP)

**PORTAGE**

2017-P-0069      STATE OF OHIO, Plaintiff-Appellee v. WILLIAM T. FERRELL, Defendant-Appellant.

Judgment affirmed in part, reversed in part, and remanded. See Opinion and Judgment Entry. [LYNCH] (WRIGHT) (TRAPP)

CRIMINAL - Nonsupport of Dependents; probation violation; community control; res judicata; allied offenses; separate, identifiable harm; multiple children; plain error; ineffective assistance of counsel; consecutive sentences; R.C. 2929.14(C)(4)(a)-(c).

2018-P-0034      STATE OF OHIO, Plaintiff-Appellee v. JAMES S. OBER, Defendant-  
2018-P-0035      Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [TRAPP] (CANNON) (LYNCH)

POST CONVICTION RELIEF - R.C. 2953.21; abuse of discretion; jurisdiction; successive petition; R.C. 2953.23(A); guilty plea; due

process; reply brief; Crim.R. 52(A); harmless error; speedy trial; terminating the incident; unindicted charges; res judicata; offense of inferior degree; lesser included offense.

2018-P-0047      STATE OF OHIO, Plaintiff-Appellee v. JAMES E. MITCHELL, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [TRAPP] (CANNON) (LYNCH) WITHDRAWAL OF GUILTY PLEA - abuse of discretion; ineffective assistance of counsel; pro se; Crim.R. 32.1; manifest injustice.

**TRUMBULL**

2018-T-0029      STATE OF OHIO, Plaintiff-Appellee v. STEVEN JAMES MAZZOLA, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [TRAPP] (WRIGHT) (LYNCH) CRIMINAL LAW - maximum sentence; restitution; R.C. 2953.08(G)(2); clearly and convincingly; contrary to law; R.C. 2929.11; R.C. 2929.12; burglary; failure to object; waiver; plain error; Crim.R. 52(B); R.C. 2929.18(A)(1); economic loss; R.C. 2929.01(L); R.C. 2929.19(B)(5); present and future ability to pay.

2018-T-0052      STATE OF OHIO, Plaintiff-Appellee v. MARK ANTHONY SLATER, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [CANNON] (WRIGHT) (RICE) CRIMINAL LAW - SENTENCING - felony sentence; appellate review; seriousness and recidivism factors; R.C. 2929.12; judgments; findings supported by the record; community control sanction.

2018-T-0073      CLEAN ENERGY FUTURE, LLC, Plaintiff-Appellee v. CLEAN  
2018-T-0077      ENERGY FUTURE-LORDSTOWN, LLC, Defendant-Appellant.

Appeals dismissed. See Judgment Entry. [WRIGHT] (LYNCH) (TRAPP)

2018-T-0088      STATE OF OHIO, Plaintiff-Appellee v. TASHI MARIE JOHNSON, Defendant-Appellant.

Appeal dismissed. See Judgment Entry. [WRIGHT] (LYNCH) (TRAPP)

2018-T-0107      STATE OF OHIO, Plaintiff-Appellee v. BRETT M. MCCLAFFERTY, Defendant-Appellant.

Appeal dismissed. See Judgment Entry. [WRIGHT] (CANNON) (TRAPP)

2019-T-0008      SUPERIOR WATERPROOFING, INC., Plaintiff-Appellee v. DELORES M. KARNOFEL, Defendant-Appellant.

Leave to proceed denied. See Judgment Entry. [CANNON] (WRIGHT) (RICE)