

**R E L E A S E**

**MARCH 22, 2002**

**ASHTABULA**

2001-A-0004 STATE OF OHIO, Plaintiff-Appellee v. DAMON T. BUTLER,  
Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [FORD] (O'NEILL) (NADER)

**JURY INSTRUCTIONS:**

Although an offense may be statutorily defined as a lesser included offense, an instruction to the jury on the lesser offense is required only where the evidence presented at trial would reasonably support both an acquittal on the crime charged and a conviction upon the lesser offense.

**LAKE**

98-L-058 STATE OF OHIO, Plaintiff-Appellee v. LLOYD V. MAPES, JR.,  
Defendant-Appellant.

Judgment affirmed in part; reversed in part and remanded. O'Neill, P.J., concurs in judgment only with Concurring Opinion. See Opinions and Judgment Entry. [FORD] (O'NEILL) (CHRISTLEY)

**CRIMINAL LAW:**

The sentencing judgment in a criminal action cannot refer to the possible imposition of bad time because the bad time statute, R.C. 2967.11, is unconstitutional.

98-L-062 STATE OF OHIO, Plaintiff-Appellee v. KATHERINE A. BARBER,  
Defendant-Appellant.

Judgment affirmed in part; reversed in part and remanded. See Opinion and Judgment Entry. [CHRISTLEY] (NADER) (GRENDALL)

**CRIMINAL LAW:**

The sentencing judgment in a criminal action cannot refer to the possible imposition of bad time because the bad time statute, R.C. 2967.11, is unconstitutional.

98-L-063 STATE OF OHIO, Plaintiff-Appellee v. HAROLD R. KAY, Defendant-  
Appellant.

Judgment affirmed in part; reversed in part and remanded. See Opinion and Judgment Entry. [CHRISTLEY] (NADER) (GRENDALL)

**CRIMINAL LAW:**

The sentencing judgment in a criminal action cannot refer to the possible imposition of bad time because the bad time statute, R.C. 2967.11, is unconstitutional.

98-L-066      STATE OF OHIO, Plaintiff-Appellee v. JOHN W. JUDD, Defendant-Appellant.

Judgment affirmed in part; reversed in part and remanded. See Opinion and Judgment Entry. [FORD] (CHRISTLEY) (NADER)

**CRIMINAL LAW:**

The sentencing judgment in a criminal action cannot refer to the possible imposition of bad time because the bad time statute, R.C. 2967.11, is unconstitutional.

98-L-138      STATE OF OHIO, Plaintiff-Appellee v. LARRY D. BROWN, Defendant-Appellant.

Judgment affirmed in part; reversed in part and remanded. O'Neill, P.J., concurs in judgment only with Concurring Opinion. See Opinions and Judgment Entry. [NADER] (O'NEILL) (GRENDALL)

**CRIMINAL LAW:**

The sentencing judgment in a criminal action cannot refer to the possible imposition of bad time because the bad time statute, R.C. 2967.11, is unconstitutional.

98-L-150      STATE OF OHIO, Plaintiff-Appellee v. STEVE SAMYNEK, Defendant-Appellant.

Judgment affirmed in part; reversed in part and remanded. O'Neill, P.J., concurs in judgment only with Concurring Opinion. See Opinions and Judgment Entry. [NADER] (O'NEILL) (GRENDALL)

**CRIMINAL LAW:**

The sentencing judgment in a criminal action cannot refer to the possible imposition of bad time because the bad time statute, R.C. 2967.11, is unconstitutional.

98-L-159      STATE OF OHIO, Plaintiff-Appellee v. JAMES O. OLP, Defendant-Appellant.

Judgment affirmed in part; reversed in part and remanded. O'Neill, P.J., concurs in judgment only with Concurring Opinion. See Opinions and Judgment Entry. [GRENDALL] (O'NEILL) (FORD)

**CRIMINAL LAW:**

The sentencing judgment in a criminal action cannot refer to the possible imposition of bad time because the bad time statute, R.C. 2967.11, is unconstitutional.

98-L-166      STATE OF OHIO, Plaintiff-Appellee v. DAVID NEWELL, Defendant-Appellant.

Judgment affirmed in part; reversed in part and remanded. O'Neill, P.J., concurs in judgment only with Concurring Opinion. See Opinions and Judgment Entry. [GRENDALL] (O'NEILL) (FORD)

**CRIMINAL LAW:**

The sentencing judgment in a criminal action cannot refer to the possible imposition of bad time because the bad time statute, R.C. 2967.11, is unconstitutional.

2000-L-146      STATE OF OHIO, Plaintiff-Appellee v. LEONARD R. NORWOOD, SR., Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [FORD] (CHRISTLEY) (GRENDALL)

**CRIMINAL LAW/CONSTITUTIONAL:**

The Sixth Amendment guarantees a criminal defendant the right to confront witnesses for biases they may hold. This right is not unlimited, and the trial court retains wide latitude to impose limits on cross-examination based on concerns about harassment, prejudice, confusion of the issues, witness safety, or interrogation that is repetitive or only marginally relevant. The Confrontation Clause guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish. The right to cross-examine adverse witnesses does not authorize defense counsel to disregard sound evidentiary rules.

2000-L-195      STATE OF OHIO, Plaintiff-Appellee v. JONAS L. SMITH, Defendant-Appellant.

Appeal dismissed. See Opinion and Judgment Entry. [CHRISTLEY] (O'NEILL) (NADER)

**CRIMINAL LAW/SENTENCING:**

A criminal appeal challenging the underlying sentence is rendered moot if the defendant voluntarily served his or her sentence prior to the hearing of the instant appeal.

2001-L-015      DONALD E. POWERS, Plaintiff-Appellant v. MAGITECH CORP., Defendant-Appellee.

Judgment reversed and remanded. Ford, P.J., dissents with Dissenting Opinion. See Opinions and Judgment Entry. [CHRISTLEY] (FORD) (GRENDALL)

**SETTLEMENTS:**

Where the meaning of terms of a settlement agreement is disputed, or where there is a dispute that contests the

existence of a settlement agreement, a trial court must conduct an evidentiary hearing prior to entering judgment.

2001-L-036    WILLIAM A. BRUCKEN, et al., Plaintiffs-Appellees v. TERRY A. GAMBILL, et al., Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [CHRISTLEY] (NADER) (GRENDALL)

**PREJUDGMENT INTEREST:**

Before prejudgment interest will be awarded, the following requirements must be met: (1) the party seeking prejudgment interest must petition the trial court within fourteen days after the entry of judgment; (2) the trial court must hold a hearing; (3) the trial court must find that the party required to pay the judgment failed to make a good faith effort to settle the case; and (4) the trial court must find that the party to whom the judgment is to be paid did not fail to make a good faith effort to settle the case.

2001-L-037    MICHAEL S. BECKA, Appellant v. STATE OF OHIO UNEMPLOYMENT COMPENSATION REVIEW COMMISSION, et al., Appellee.

Judgment affirmed. See Opinion and Judgment Entry. [FORD] (CHRISTLEY) (GRENDALL)

**MISCELLANEOUS**

Pursuant to R.C. 4141.28, the appellate process for unemployment cases does not involve the hybrid review and de novo proceeding found in other R.C. Chapter 119 appeals. An unemployment compensation appeal provides the least opportunity for a reviewing court to weigh and assess evidence and credibility of witnesses of any R.C. Chapter 119 administrative proceeding. Our standard of review is to determine if it is unlawful, unreasonable, or against the manifest weight of the evidence. We are precluded from assessing witness credibility as that is the function of the hearing officer.

2001-L-054    STATE OF OHIO, Plaintiff-Appellee v. THOMAS M. SWANK, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [GRENDALL] (CHRISTLEY) (NADER)

**CRIMINAL LAW:**

In determining whether an investigative stop is proper, a court must examine "the totality of the surrounding circumstances," which provides the basis for the officer's suspicion. The determination as to whether reasonable suspicion exists is examined from the police officer's point

of view, not whether a defendant can explain the situation. Additionally, any traffic violation witnessed by a police officer is, standing alone, sufficient grounds to stop the vehicle.

2001-L-172 STATE OF OHIO, Plaintiff-Appellant v. MIKE PULJIC, Defendant-Appellee.

Upon the request of Appellant, the appeal is hereby dismissed. See Judgment Entry.

2001-L-197 IN RE: ADOPTION OF KATLYN ELIZABETH SARTAIN  
Judgment affirmed. See Opinion and Judgment Entry. [GRENDALL] (FORD) (CHRISTLEY)

**DOMESTIC RELATIONS:**

Generally, the consent of a natural parent is a prerequisite to an adoption. However, R.C. 3107.07(A) provides that the consent to an adoption is not required if the natural parent, without justifiable cause, has failed to communicate with the child or to provide for the maintenance and support of the child for a period of at least one year immediately preceding the filing of the petition for adoption. A natural parent can fulfill his or her duty of support through non-monetary contributions. R.C. 3107.07 must be strictly construed in favor of the natural parent. A petitioner bears the burden of proving, by clear and convincing evidence, that consent is not necessary. A trial court's determination will not be disturbed absent a showing that the determination was against the manifest weight of the evidence.

**TRUMBULL**

2000-T-0156 STATE OF OHIO, Plaintiff-Appellee v. ANTHONY J. MADELINE, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [GRENDALL] (CHRISTLEY) (NADER)

**CRIMINAL LAW/PLEAS:**

In the context of a guilty plea, to demonstrate ineffective assistance of trial counsel, a defendant must show: (1) counsel's performance was deficient and (2) the defendant was prejudiced by the deficient performance in that there is a reasonable probability that, but for counsel's error(s), the defendant would not have pled guilty. The mere fact that, if not for the alleged ineffective assistance of counsel, the defendant would not have entered a guilty plea is not sufficient to establish the requisite connection between the guilty plea and the ineffective assistance.

2001-T-0026 DIANE ELIZABETH YOUNG, Plaintiff-Appellant v. JAMES STONER YOUNG, Defendant-Appellee.

Judgment affirmed. See Opinion and Judgment Entry. [CHRISTLEY] (FORD) (GRENDALL)

**DOMESTIC RELATIONS/SPOUSAL SUPPORT:**

The fact that the trial court determined that the wife had a need for spousal support and the husband had an ability to pay such support does not necessarily indicate that the court applied the wrong standard in light of the fact that the court adequately considered the factors contained in R.C. 3105.18 and further stated that spousal support was appropriate and reasonable.