

Appellate Court Decisions - Week of 1/23/17

First Appellate District of Ohio

Nothing to report.

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

State v. Valdez, 2017-Ohio-241

Trafficking in Cocaine: *Gonzales/Sanchez*

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2017/2017-Ohio-241.pdf>

Following the Supreme Court's holding in *Gonzales* (not *Sanchez*, for some reason, although the same result was reached), the Third District reduced appellant's conviction for trafficking in cocaine from a first-degree felony to a fifth-degree felony and remanded for a new sentencing hearing.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

State ex rel. Cook v. Forchione, 2017-Ohio-270

Mandamus

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2017/2017-Ohio-270.pdf>

The Fifth District granted Relator's request for a writ of mandamus requiring the trial court to issue findings of fact and conclusions of law in support of its denial of his motion for post-conviction relief because Relator has a clear legal right to the findings of fact and conclusions of law under R.C. 2953.21

Sixth Appellate District of Ohio

State v. Grubbs, 2017-Ohio-41

Search: Motion to Suppress

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2017/2017-Ohio-41.pdf>

The trial court did not err in granting Appellee's motion to suppress the search of his person. Appellee was a passenger in a truck. The officer had a right to stop the truck based on his reasonable suspicion the driver had a suspended license. Following the stop, he could order Appellee out of the truck, and Appellee complied. There was no evidence Appellee was armed or dangerous. Appellee apparently had some "marijuana flakes" on his shirt. However, the officer's search after that was based on finding drugs, not weapons, so it could not be justified under *Terry*. The officer lacked probable cause to search appellee because the "marijuana flakes" only constituted a minor misdemeanor offense. Exigent circumstances did not apply, because exigent circumstances do not apply to misdemeanor offenses. Appellee also did not voluntarily consent to being searched.

State v. Leonard, 2017-Ohio-211

Right to Counsel

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2017/2017-Ohio-211.pdf>

The trial court erred in denying Appellant's motion for a new trial because his Sixth Amendment right to counsel was violated. Appellant earned \$5,000 a month, but was paying \$4,300 a month in child and spousal support alone. He hired counsel at first, but could not continue paying. He got a public defender, who withdrew, saying Appellant did not qualify for a public defender. Then, in a series of events worth reading, the trial court basically forced Appellant to trial without an attorney. The trial court was reversed because, despite Appellant's repeated requests for an attorney, the trial court failed to fully inquire into the circumstances impacting Appellant's ability to retain counsel.

State v. Brown, 2017-Ohio-213

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2017/2017-Ohio-213.pdf>

Appellant was under community control at the time of the burglary offense underlying this case, so the trial court's discretionary imposition of a 15-month term of incarceration was proper and compliant with R.C. 2953.08(G)(2). However, there was no violation of community control motion, or even a commencement of such an action. Therefore, the imposition of an additional 305-day consecutive term of incarceration based upon a parole violation was not proper.

Seventh Appellate District of Ohio

State v. Masciarelli, 2017-Ohio-170

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2017/2017-Ohio-170.pdf>

The trial court erred in sentencing appellant to 12 months in prison, suspended to six months in jail and six months in the Eastern Ohio Correction Center. The trial court could not sentence appellant to a prison sentence and community control for the same offense.

Eighth Appellate District of Ohio

State v. Dickerson, 2017-Ohio-177

Ineffective Assistance

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-177.pdf>

Appellant's trial counsel was ineffective for failing to timely file a motion to dismiss for preindictment delay. SDF

State v. King, 2017-Ohio-181

Post-Conviction Relief: DNA

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-181.pdf>

On King’s motion for postconviction relief, the Eighth District said “the trial court abused its discretion when it denied King’s request for additional DNA testing materials, request that the ‘unknown’ DNA profile be uploaded into CODIS, and request for an evidentiary hearing.” The Eighth District then ordered “that King be granted access to the DNA test results and testing material, that the known DNA profile be uploaded into CODIS, and that King be granted an evidentiary hearing.”

Cleveland v. Catchings-El, 2017-Ohio-189

Plea

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-189.pdf>

Summary from the Eighth District: “The trial court erred in accepting a no contest plea from the defendant where the court did not personally address him and determine from him that he was knowingly and voluntarily entering a no contest plea, and the court did not explain the effects of plea.”

Ninth Appellate District of Ohio

State v. Hamilton, 2017-Ohio-230

Trafficking in Cocaine: Weight: *Gonzales/Sanchez*

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2017/2017-Ohio-230.pdf>

Appellant’s convictions for trafficking in cocaine and possession of cocaine as first-degree felonies were reduced to fifth-degree felonies because the state failed to prove the purity of the cocaine. The Ninth District followed the Supreme Court’s decisions in *Gonzales* and *Sanchez*.

Tenth Appellate District of Ohio

State v. Ireland, 2017-Ohio-263

Jury Instruction

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2017/2017-Ohio-263.pdf>

Summary from the Tenth District: “Because, pursuant to R.C. 2901.21(A), the state bore the burden of proving beyond a reasonable doubt that the defendant committed a voluntary act, the trial court erred in instructing that the defendant bore the burden of proving blackout resulting from PTSD as an affirmative defense.”

Eleventh Appellate District of Ohio

State v. Jones, 2017-Ohio-251

Trafficking in Heroin: Sufficiency

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2017/2017-Ohio-251.pdf>

Appellant’s conviction for trafficking in heroin was based on insufficient evidence. In spite of direct testimony he was seen “selling drugs,” the witness never identified what type of “drugs” the witness saw him sell. The state proved Appellant possessed heroin and the apartment where he had been staying a few days contained plastic baggies, rubber gloves, and a digital scale, there was no evidence he prepared for sale, distributed, or sold heroin. The amount of heroin he had was 1.08 grams, and there was no testimony that was more than a personal-use amount.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.