

Appellate Court Decisions - Week of 10/21/13

First Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

State v. Swihart, 2013-Ohio-4645

Sentencing: PSI: R.C. 2951.03(B)(5)

Full Decision: <http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2013/2013-ohio-4645.pdf>

The trial court erred by failing to make a finding about the defendant's objection to his pre-sentence investigation report's allegation that he was laughing during the trial. That failure violated R.C. 2951.03(B)(5) and voids the sentence.

Notably, R.C. 2951.03(B)(5) provides as follows:

If the comments of the defendant or the defendant's counsel, the testimony they introduce or any of the other information they introduce alleges any factual inaccuracy in the presentence investigation report or the summary of the report, the court shall do either of the following with respect to each alleged factual inaccuracy:

- (a) Make a finding as to the allegation;
- (b) Make a determination that no finding is necessary with respect to the allegation because the factual matter will not be taken into account in the sentencing of the defendant.

Fourth Appellate District of Ohio

State v. Clay, 2013-Ohio-4649

Sentencing: Firearm Specifications: R.C. 2941.145

Full Decision: <http://www.supremecourt.ohio.gov/rod/docs/pdf/4/2013/2013-ohio-4649.pdf>

“[T]he trial court imposed a mandatory three-year prison term pursuant to R.C. 2941.145. However, neither the indictment nor the verdict forms contained the latter part of R.C. 2941.145, i.e., ‘and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm,

or used it to facilitate the offense.’ Instead, the indictment and the verdict forms contained only the first part of the statute, *i.e.*, ‘the offender had a firearm on or about the offender’s person or under the offender’s control while committing the offense.’ Thus, the indictment did not comply with R.C. 2941.145, and, consequently, the trial court could not impose the three-year mandatory prison term.”

Fifth Appellate District of Ohio

State v. Falke, 2013-Ohio-4685

Sentencing: Consecutive To Future Sentence

Full Decision: <http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2013/2013-ohio-4685.pdf>

A trial court cannot impose a sentence that will run consecutive to a sentence that will be imposed at some future time.

Supreme Court of Ohio

State v. Boykin, 2013-Ohio-4582

Sealing of Records

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/o/2013/2013-ohio-4582.pdf>

A gubernatorial pardon does not automatically entitle the recipient to have the record of the pardoned conviction sealed.

“[W]hile a pardon releases the offender from further punishment prescribed for the offense and removes certain disabilities consequent on the conviction, there is nothing in the Constitution, the Revised Code, or our case law that requires the sealing of a criminal record based on a pardon. It is within the purview of the General Assembly to provide that automatic entitlement to sealing of a criminal record is a consequence of a pardon. But in the absence of such a provision, we hold that a gubernatorial pardon does not automatically entitle the recipient to have the record of the pardoned conviction sealed.”

State v. Roberts, 2013-Ohio-4580

Aggravated Murder: Sentencing: Death Penalty

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/o/2013/2013-ohio-4580.pdf>

This is a fairly fact-specific case, but the important part to note is that the Ohio Supreme Court found that the trial court erred in failing to consider relevant mitigating evidence in the defendant's allocution.

***State v. Wesson*, 2013-Ohio-4575**

Death Penalty: R.C. 2945.06

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/o/2013/2013-ohio-4575.pdf>

“When a person charged with a capital offense waives a jury, the panel hearing the case shall be composed of three judges, two of whom shall be designated by the presiding judge or chief justice of the common pleas court, and if no one holds either position, then they shall be designated by the chief justice of the Supreme Court. (*State v. Eley*, 77 Ohio St.3d 174, 672 N.E.2d 640 (1996), clarified.)”

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.