

Appellate Court Decisions - Week of 10/3/16

First Appellate District of Ohio

State v. Cobia, 2016-Ohio-7213

Appellate Review: Jurisdiction: Postconviction: Sex-Offender Registration

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-7213.pdf>

Summary from the First District:

“The common pleas court had no jurisdiction to entertain defendant’s postconviction motion challenging the tolling under R.C. 2950.07 of his ten-year sex-offender registration period: the motion was not reviewable under Crim.R. 47 because it was not filed in a pending criminal proceeding, under R.C. 2953.21 et seq. as a postconviction petition because it did not allege a constitutional violation, under Crim.R. 33 as a motion for a new trial or under Crim.R. 32.1 as a motion to withdraw guilty pleas because the conviction was upon guilty pleas and the motion did not seek withdrawal of those pleas, under R.C. Chapter 2731 as a petition for a writ of mandamus or under R.C. Chapter 2721 as a declaratory judgment action because the motion did not satisfy those statutes’ procedural requirements, or under R.C. 2725.01 as a petition for a writ of habeas corpus because the offender had been released from confinement; nor did Crim.R. 57(B) require review under Civ.R. 60(B) because the motion did not seek relief from the offender’s convictions.

“The court of appeals dismissed for lack of jurisdiction the appeal from the common pleas court’s judgment overruling a sex-offender’s postconviction motion challenging the tolling under R.C. 2950.07 of his ten-year registration period: the judgment was not reviewable under the jurisdiction conferred upon an intermediate appeals court by R.C. 2953.02 or 2953.08 to review a judgment of conviction entered in a criminal case, by R.C. 2953.23(B) to review an order awarding or denying postconviction relief, or by R.C. 2505.03(A) to review, affirm, modify, or reverse a ‘final order, judgment or decree’; nor was the matter reviewable by either the common pleas court or the court of appeals under the jurisdiction to correct a void judgment.”

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

State v. Sepulveda, 2016-Ohio-7177

Assault: Sufficiency

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2016/2016-Ohio-7177.pdf>

Appellant's assault conviction was based on insufficient evidence where the state did not present any testimony establishing physical harm or an attempt to cause physical harm. Appellant attempted to spit on a police officer but missed. There was no testimony about what kind of harm could have resulted. However, the Third District refused to hold that there are no situations in which spitting on someone would be assault.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

Nothing new.

Sixth Appellate District of Ohio

State v. Poorman, 2016-Ohio-711

Search: Motion to Suppress

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2016/2016-Ohio-7110.pdf>

The trial court did not err in granting Appellee's motion to suppress. The police officer stopped Appellee for having a headlight out, but it was actually functioning. There was no reasonable suspicion to initiate the traffic stop.F

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

State v. Anderson, 2016-Ohio-7044

This is likely to be a very controversial case. Pay special attention.

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-7044.pdf>

A trial court is not permitted to impose a term of residential or nonresidential community control sanctions on one felony count, to be served consecutively to a term of imprisonment imposed on another. SDF

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

Nothing new.

Eleventh Appellate District of Ohio

State v. Marhefka, 2016-Ohio-7158

Permitting Drug Abuse: Sufficiency

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2016/2016-Ohio-7158.pdf>

Appellant's conviction for permitting drug abuse was based on insufficient evidence where, although Appellant was the lessee of the residence and there was evidence heroin was possessed or trafficked at the residence, there was no evidence Appellant knew about it.

In re T.R.J., 2016-Ohio-7160

Delinquency: Tampering With Evidence: Sufficiency

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2016/2016-Ohio-7160.pdf>

Appellant's juvenile adjudication for tampering with evidence was based on insufficient evidence where there was no evidence he knew an investigation was taking place when he concealed marijuana. He hid marijuana in a garbage can while he and some other boys were trespassing in a community center and smoking marijuana.

Twelfth Appellate District of Ohio

In re Yoder, 2016-Ohio-7190

Sealing Records

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2016/2016-Ohio-7190.pdf>

Importuning based on soliciting sex over the internet from a person Appellant believed to be under the age of 16, but when the person solicited was actually a police officer, is not barred by R.C. 2953.32 from being sealed, because the “victim” was not actually under the age of 16.

Supreme Court of Ohio

State v. Martin, 2016-Ohio-7196

R.C. 2907.323(A)(1). R.C. 2907.01(H): Nudity Definition

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-7196.pdf>

“[W]ith respect to R.C. 2907.323(A)(1), the definition of nudity that applies is provided by R.C. 2907.01(H).” R.C. 2907.323 is the illegal use of a minor in nudity-oriented material or performance statute.

Sixth Circuit Court of Appeals

Nothing new.