

Appellate Court Decisions - Week of 10/31/16

First Appellate District of Ohio

State v. Wang, 2016-Ohio-7578

Appellate Review: Jurisdiction

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-7578.pdf>

Summary from the First District:

“The jointly recommended consecutive prison sentences imposed upon defendant’s guilty pleas to aggravated trafficking and trafficking were not subject to review on direct appeal, because the sentences were authorized by law: R.C. 2925.03(C)(1)(e) required a prison term for his aggravated-trafficking offense, and R.C. 2929.14(C)(4) did not require findings to support the jointly recommended consecutive sentences. R.C. 2953.08(D)(1).

“The common pleas court had no jurisdiction to entertain defendant’s postconviction motion seeking resentencing for alleged errors in the imposition of mandatory prison time and consecutive sentences without the R.C. 2929.14(C)(4) findings: the motion was not reviewable 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, or under R.C. Chapter 2731 as a petition for a writ of mandamus, under R.C. Chapter 2721 as a declaratory judgment action, or under R.C. Chapter 2725 as a petition for a writ of habeas corpus, because the motion did not satisfy those statutes’ procedural requirements. *See* R.C. 2731.04, 2721.12(A), and 2725.04.

“Defendant’s appeal, taken from the common pleas court’s judgment overruling his postconviction motion seeking resentencing for alleged errors in the imposition of mandatory prison time and consecutive sentences without the R.C. 2929.14(C)(4) findings, was subject to dismissal for lack of jurisdiction: because the motion was not reviewable by the common pleas court under R.C. 2953.21 et seq., the judgment overruling the motion was not reviewable by the court of appeals under the jurisdiction conferred by R.C. 2953.23(B) to review an order denying postconviction relief; because the judgment was not a “final order,” it was not reviewable by the court of appeals under the jurisdiction conferred by R.C. 2505.03(A) to review, affirm, modify, or reverse a “final order, judgment or decree”; and because mandatory prison time was required for defendant’s aggravated-trafficking offense and R.C. 2929.14(C)(4) findings were not required for the jointly recommended consecutive sentences, the judgment of conviction

was not subject to correction by either the common pleas court or the court of appeals under the jurisdiction to correct a void judgment.”

State v. Harrison, 2016-Ohio-7579

Due Process: Witnesses: Perjury Admonition

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-7579.pdf>

Summary from the First District:

“The trial court did not interfere with defendant’s due-process right to present a defense when it warned a defense witness against perjuring herself, because the perjury admonition was not so intimidating that it prevented the witness from testifying on defendant’s behalf.

“Defendant failed to demonstrate that the trial court’s perjury admonition interfered with a defense witness’s free and voluntary choice to testify where the court’s provision of counsel for the defense witness had ensured that the witness’s decision to testify had been made voluntarily and in the witness’s own interest, rather than being the product of judicial coercion.”

State v. Buchert, 2016-Ohio-7580

Sentencing: Driver’s License Suspension: DNA Collection

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-7580.pdf>

Summary from the First District:

“The trial court was not required to discuss on the record the R.C. 2929.11(A) and 2929.12 factors when sentencing defendant for vehicular assault and the appellate court presumes that the trial court considered the factors where defendant does not demonstrate otherwise.

“The trial court erred in suspending defendant’s driver’s license for life, because R.C. 4510.02(A)(4) required the trial court to suspend defendant’s driver’s license for a period between one and five years for vehicular assault under R.C. 2903.08(A)(2)(b).

“Where the trial court failed to inform defendant about R.C. 2901.07’s DNA collection requirement any error was harmless and resulted in no prejudice to defendant, because the statute did not confer substantive rights on defendant.”

In re: N.D., 2016-Ohio-7620

Juvenile: Objections: Juv.R. 40(D)(4)(d)

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-7620.pdf>

Summary from the First District:

“The trial court erred when it dismissed the juvenile’s objections to the magistrate’s decision adjudicating him delinquent rather than conducting an independent review and ruling on the objected matters as required by Juv.R. 40(D)(4)(d).”

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

State v. Burkhart, 2016-Ohio-7534

OVI: Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/4/2016/2016-Ohio-7534.pdf>

This is an OVI case where the Fourth District reverses the trial court’s grant of a motion to suppress. The opinion and dissent contain lengthy discussions of whether the trial court’s decision was supported by competent, credible evidence. This is mainly useful for comparison purposes to other OVI cases.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Vigil, 2016-Ohio-7485

Domestic Violence: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-7485.pdf>

Summary from the Eighth District: “Appellant’s convictions for rape and kidnapping were supported by sufficient evidence in the record and were not against the manifest weight of the evidence. His conviction for domestic violence was overturned as the record did not demonstrate any physical harm associated with that offense. Appellant failed to demonstrate ineffective assistance of counsel, and on his failure to object claim he failed to show a substantial violation of defense counsel's essential duties and that there was material prejudice. The trial court made the requisite findings for imposing consecutive sentences pursuant to R.C. 2929.14(C)(4), and it could not clearly and convincingly be found that the record does not support the sentencing court's findings or that the sentence is otherwise contrary to law. The balance or relative weight to be given to relative factors were within the discretion of the trial court.”

Regarding the domestic violence charge, the state argued “the domestic violence related to what happened during the evening when appellant was grabbing the victim’s shoulder and when he was trying to keep the victim from entering her vehicle. However, there was no evidence that appellant caused or attempted to cause physical harm while trying to prevent the victim from leaving. The victim testified that the bruise on her forearm was caused earlier in the day when appellant held her arm down and raped her.”

Strongsville v. Dolbin, 2016-Ohio-7484

Violation of Protection Order: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-7484.pdf>

Summary from the Eighth District: “The municipal court had subject matter jurisdiction to issue the domestic violence temporary protection order; thus, had jurisdiction over the temporary protection order violation. The record was insufficient to determine whether the defendant was afforded due process when the temporary protection order was issued because the case from which the order was issued was not transmitted to the court. The evidence was insufficient to support a conviction for violating the temporary protection order because the order was not part of the record or introduced as an exhibit at trial. Therefore, no substantive testimony was given regarding the terms and conditions of the temporary protection order. Without this evidence, the city could not prove the defendant's conduct violated the terms of the protection order.”

State v. May, 2016-Ohio-7491

Sentencing: Community Control

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-7491.pdf>

Summary from the Eighth District: “The trial court erred when it sentenced defendant because it did not advise him at the sentencing hearing that he could spend up to six months in a community-based correctional facility. The trial court further erred when it ordered that defendant serve two terms of community control sanctions consecutively because the maximum under R.C. 2929.15(A)(1) is five years. The trial court also erred when it sentenced defendant to prison for one felony offense and community control sanctions for another felony offense, and then ordered the community control sanctions to begin upon the defendant’s release from prison.”

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.