Appellate Court Decisions - Week of 10/7/13

First Appellate District of Ohio

State v. Rashid, 2013-Ohio-4458

Sentencing: Crim.R. 11: Criminal Miscellaneous

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120778_10092013.pdf

Summary from the First District:

The trial court did not err in sentencing the defendant under R.C. 2929.11 and 2929.12 to prison rather than imposing a sentence more tailored toward supervision and behavioral modification because R.C. 2929.11 and 2929.12 are not fact-finding statutes, thus a reviewing court presumes that the trial court gave proper consideration to those statutes.

Where a trial court fails to make the required statutory findings under R.C. 2929.14(C)(4) in imposing consecutive prison terms, those portions of the trial court's judgments imposing consecutive prison terms are contrary to law and must be vacated.

The record did not reveal that the trial court erred in accepting the defendant's guilty plea where the defendant argued his plea was not knowing, voluntary, or intelligent because his lawyer had promised him that he would be released from jail for one week prior to serving his sentence: the trial court complied with Crim.R. 11 and specifically asked the defendant whether anyone had made any promises to him, to which the defendant replied in the negative.

The trial court did not err in overruling the defendant's presentence motion to withdraw his guilty plea where the trial court gave fair consideration to the defendant's motion, the defendant was afforded a full Crim.R. 11 colloquy, and the record did not refute the trial court's determinations that the defendant was represented by highly competent counsel; he had understood the nature of the charges and possible penalties when he had pleaded guilty; the defendant had no defense to the charges; and the state would be prejudiced by a withdrawal because the defendant's motion was made only when the defendant's request for a one-week continuance or stay of sentencing was denied.

The defendant did not receive ineffective assistance of counsel despite the defendant's argument that his lawyer had promised him that he would receive one week out of jail before serving his prison sentence: the record did not reveal that any promises were made to the defendant in exchange for his guilty plea; and the trial court ordered the defendant to be released pending sentencing, but the defendant's municipal-court charges prevented his release.

***State v. Goshade*, 2013-Ohio-4457**

Evidence: Hearsay: R.C. 2941.25

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120586_10092013.pdf

Summary from the First District:

The victim's statements to a police officer that the defendant had kicked down a bedroom door, beat her, and tried to choke her with an electrical cord were admissible under the excited-utterance exception to the hearsay rule where the victim was crying and upset and had visible injuries at the time she made the statements, and where the officer testified that, in his opinion, the victim had been under the stress of startling events.

The admission of the victim's statements into evidence as excited utterances did not violate the defendant's right to confront the witnesses against him because the victim's statements were not testimonial: the police officer was responding to a present emergency and the victim was seeking to receive assistance from the police officer because the defendant, who had fled the scene, was still at large.

The trial court did not err in sentencing the defendant for both domestic violence under R.C. 2919.25(A) and felonious assault with a deadly weapon under R.C. 2903.11(A)(2) because they were not allied offenses of similar import in that they involved separate conduct where the domestic-violence conviction resulted from the defendant's beating of the victim with his fists and the felonious assault resulted from the defendant's trying to choke the victim with an electrical cord. [*But see* DISSENT: The domestic-violence and felonious-assault convictions were allied offenses of similar import because the state relied upon the same conduct, a single assault on one victim without a temporal interruption, to prove both offenses, and the offenses were not committed separately or with a separate animus.]

***State v. Temaj-Felix*, 2013-Ohio-4463**

R.C. 2941.25

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120040_10092013.pdf

Summary from the First District:

Where the defendant-driver ran a red light, striking two pedestrians crossing the street, killing one and injuring the other, and failed to stop at the scene, the trial court erred in convicting the defendant of two counts of failure to stop after an accident under R.C. 4549.02: the failure-to-stop offenses were allied offenses of similar import subject to merger because there was only one collision, and the unit of prosecution in R.C.

4549.02 is the number of collisions and not the number of victims. *See State v. Hundley*, 1st Dist. Hamilton No. C-060374, 2007-Ohio-3556.

Second Appellate District of Ohio

***State v. Crawford*, 2013-Ohio-4398**

Obstructing Official Business

Full Decision: http://www.sconet.state.oh.us/rod/docs/pdf/2/2013/2013-ohio-4398.pdf

Several detectives, wearing vests with "POLICE" written on the front and back, approached a residence where the defendant was located to execute a search warrant. The front door was open as they approached, but they had not yet announced that they had a search warrant. The defendant yelled "Police" and shut the door, but did not lock it. The detectives used a battering ram, which they already had out, to knock the door open. They detained seven people and conducted their search. The defendant was charged with obstructing official business.

The Second District held that the defendant's actions did not constitute obstructing official business because there was no evidence his yelling "Police" was intended to hamper or impede the execution of the search warrant, and there was no evidence that his statement or action of closing the door actually impeded the investigation

Eighth Appellate District of Ohio

***State v. Wright*, 2013-Ohio-4473**

Motion to Suppress: Search

Full Decision: http://www.sconet.state.oh.us/rod/docs/pdf/8/2013/2013-ohio-4473.pdf

The trial court did not err in granting the defendant's motion to suppress, where, despite the fact that he was on PCP and acting a wild in the halls of the hotel where he was staying, he did not give consent to search his room and he had not been evicted from the hotel when the search took place.

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.