

## Appellate Court Decisions - Week of 12/1/14

### First Appellate District of Ohio

#### **State v. Ward, Appeal No. C-140131 (Judgment Entry)**

**Final Appealable Order: Dismissal**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-140131\\_12032014.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-140131_12032014.pdf)

**This appeal was dismissed because it lacked a final appealable order where the judgment of conviction did not satisfy Crim.R. 32(C). The judge's sheet/journal entry had the fact of conviction on one sheet and the sentence on another. They all must be on one sheet, or you don't have a final appealable order. Therefore, if you're filing an appeal, and you see the conviction and the sentence aren't all on one sheet, you better go back to the trial court to get it fixed.**

#### **State v. Morgan, 2014-Ohio-5325**

**Procedure: Sentencing: Jurisdiction**

**Full Decision:** [http://www.hamilton-co.org/appealscourt/docs/decisions/C-140146\\_12032014.pdf](http://www.hamilton-co.org/appealscourt/docs/decisions/C-140146_12032014.pdf)

#### **Summary from the First District:**

“The 2012 amendments enacting R.C. 2929.19(B)(2)(g) did not apply to confer upon the common pleas court jurisdiction to correct defendant's 2010 jail-time-credit determination: R.C. 2929.19(B)(2)(g)(iii) provides a means for “correct[ing] any error in making a determination under [R.C. 2929.19](B)(2)(g)(i)”; and defendant's jail-time credit, because it was determined before the statute was amended, was not determined under R.C. 2929.19(B)(2)(g)(i).

“The common pleas court lacked jurisdiction to entertain defendant's claims that the trial court had erred as a matter of law in determining his jail-time credit: the claims were reviewable under R.C. 2953.21 et seq., governing the proceedings on a postconviction petition, because they alleged errors of law; but defendant failed to satisfy either the time restrictions of R.C. 2953.21 or the jurisdictional requirements of R.C. 2953.23; and the claimed errors, if demonstrated, would not have rendered defendant's convictions void.

“The common pleas court erred in overruling defendant's motion to correct his jail-time credit to the extent that his preconviction-confinement credit had been miscalculated, because his judgment of conviction was subject to correction under Crim.R. 36.

“The common pleas court lacked jurisdiction to correct defendant’s jail-time credit after defendant had appealed the court’s entry overruling his motion to correct the credit, because granting that relief constituted an act inconsistent with the appeals court’s jurisdiction to review the lower court’s decision denying that relief.”

### **Second Appellate District of Ohio**

*Nothing new.*

### **Third Appellate District of Ohio**

*Nothing new.*

### **Fourth Appellate District of Ohio**

*Nothing new.*

### **Fifth Appellate District of Ohio**

**State v. Phillips, 2014-Ohio-5322**

**Child Endangerment: Sufficiency/Weight**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2014/2014-ohio-5322.pdf>

**Appellant’s conviction for child endangering was based on insufficient evidence where the state failed to prove that the discipline she employed on her child resulted in physical harm or could result in a substantial risk of physical harm to the child. The state also failed to prove her actions were reckless. Appellant forcibly removed her son from a Wal-Mart and took him to her vehicle by grabbing him by the neck and torso because her son was being unruly and using foul language.**

### **Sixth Appellate District of Ohio**

*Nothing new.*

### **Seventh Appellate District of Ohio**

*Nothing new.*

## Eighth Appellate District of Ohio

### ***State v. Tate, 2014-Ohio-5269***

Sentencing: Allied Offenses

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-5269.pdf>

Appellant's two kidnapping charges should not have merged where his actions in luring the victim to a secluded location were distinct from the force he subsequently used to facilitate a gross sexual imposition. However, the second kidnapping charge, wherein Appellant used force to compel the victim to her knees and contact his penis, should have merged with the offenses of gross sexual imposition and public indecency. The kidnapping force was necessary to complete the gross sexual imposition. The penile exposure for the public indecency was also necessary for the gross sexual imposition.

### ***State v. Willard, 2014-Ohio-5278***

Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-5278.pdf>

I have no idea if what this attorney did is going to turn out well for his client, or awful – though I suspect the concurrence gives a strong hint at how poorly this is going to turn out.

Appellant was originally found guilty of 21 various criminal counts. Counts 3 through 11 were second-degree felonies, but Appellant was sentenced to 1 year on each. His total sentence was 20 and one-half years in prison, but all the years were suspended and Appellant was given five years of community control. This appeal arose after Appellant was found guilty of violating his community control and sentenced to 8 years in prison. Appellant argued, and the Eighth District agreed, that Appellant's original sentence was void because he had to get at least a minimum of two years on counts 3 through 11. He then argued that the eight-year community-control-violation sentence was void because, if the original sentence was void, he was not properly apprised of the maximum penalty he was facing if he violated his community control sanctions. The Eighth District agreed with that argument as well, and vacated the community control violation sentence. It then remanded the cases for de novo resentencing, where Appellant faces a

minimum of 24 years, 9 months in prison, and a maximum of 92 years, 6 months.

***State v. Plants, 2014-Ohio-5293***

Sentencing: Restitution

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-5293.pdf>

The trial court erred in Appellant's attempted arson case by imposing restitution for the home security system the victims installed as a result of the attempted arson. In other words, the trial court ordered Appellant to pay for the home security system the victims did not have prior to the attempted arson, and that they bought because the attempted arson scared them. That was error, because it was not an economic loss as defined by statute.

**Ninth Appellate District of Ohio**

*Nothing new.*

**Tenth Appellate District of Ohio**

***State v. Smith, 2014-Ohio-5303***

Dismissal: Drug Possession/Sale: Controlled Substance Analogs

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2014/2014-ohio-5303.pdf>

The trial court did not err in granting appellee's motion to dismiss the indictments against him for trafficking in controlled substance analogs where the statutory scheme in existence at the time did not incorporate the definition of a controlled substance analog into criminal law. "[W]e conclude that, during the period from February through July of 2012, R.C. 2925.03 and 2925.11 did not adequately 'state a positive prohibition \*\*\* and provide a penalty for violation of such prohibition' on the sale or possession of control substance analogs."

## **State v. Darazim, 2014-Ohio-5304**

### Receiving Stolen Property

#### Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2014/2014-ohio-5304.pdf>

Appellant's convictions for receiving stolen cigarettes was based on insufficient evidence as to the value of the cigarettes where the value was based on the officer's testimony as to what the store receipt said they were worth, and the state failed to produce that receipt. That testimony was hearsay, and it was plain error to admit it. Without that testimony, there was no evidence of the value of the cigarettes. (The state used cigarettes donated by CVS as the bait cigarettes. CVS scanned all the cigarettes and generate the receipt in question.)

### Eleventh Appellate District of Ohio

*Nothing new.*

### Twelfth Appellate District of Ohio

*Nothing new.*

### Supreme Court of Ohio

## **State v. Herring, 2014-Ohio-5228**

### Postconviction Relief: Capital Case

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/0/2014/2014-ohio-5228.pdf>

The trial court did not err in granting Appellee's petition for postconviction relief where Appellee's counsel provided ineffective assistance in failing to properly prepare for the mitigation phase of Appellee's capital trial.

This case provides an extensive analysis of what ultimately constituted an ineffective investigation by trial counsel for the mitigation phase of a death penalty case. If you're doing a death penalty case, this is worthwhile reading.

### Sixth Circuit Court of Appeals

*Nothing new.*

**Supreme Court of the United States**

*Nothing new.*