# Appellate Court Decisions - Week of 12/10/18

*Note: This is not a comprehensive list of every case released this week.*

## First Appellate District of Ohio

***State v. Watson*, 2018-Ohio-4971**

**Speedy Trial: Guilty Plea**

**Full Decision:**
**http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-4971.pdf**

**Summary from the First District: "Defendant waived his constitutional and statutory speedy-trial rights where his guilty plea was made knowingly, intelligently, and voluntarily."**

***In re K.P.*, 2018-Ohio-4972**

**Aggravated Robbery: Felonious Assault: Allied Offenses: R.C. 2941.25: Sentencing**

**Full Decision:**
**http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-4972.pdf**

**Summary from the First District: "Where in committing felonious assault defendant used force greater than was necessary to effectuate an aggravated robbery, defendant acted with a specific intent to harm, separate from any animus to rob the victim, and the offenses were separately punishable under R.C. 2941.25. Defendant committed felonious assault with an animus separate from that of aggravated robbery where defendant beat the victim into unconsciousness, continued to beat the victim after he had lost consciousness, and then stole property from the victim; therefore, the juvenile court did not err under R.C. 2941.25 in imposing separate punishments for the offenses."**

***State v. Freeman*, 2018-Ohio-4973**

**Sentencing: Mandatory Fine: Indigency**

**Full Decision:**
**http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-4973.pdf**

**Summary from the First District: "The trial court did not err in imposing a mandatory fine where defendant filed an affidavit of indigency that established he was currently unable to pay the fine, the record supported a finding that defendant would have the future ability to pay the fine, and the trial court considered defendant's present and future ability to pay the fine as required by R.C. 2929.19(B)(5)."**

***State v. Merritt*, 2018-Ohio-4995**

**Guilty Plea: Sex Offender Registry**

**Full Decision:**
**http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-4995.pdf**

**Summary from the First District: "Defendant's sole assignment of error, which alleges that his guilty pleas were not knowing, intelligent, and voluntary because the trial court did not inform him prior to accepting his pleas that as a Tier III sex offender he would be subject to community notification and residency restrictions, must be overruled where defendant's Tier III classification was not included in the judgment of conviction and sentence: where defendant's Tier III classification was not included in the judgment of conviction and sentence, he is not subject to community notification and residency restrictions, because those sanctions were never imposed; therefore, the appellate court cannot decide and defendant cannot show that his guilty pleas were not knowing, intelligent, and voluntary on the basis that he was not informed about community notification and residency restrictions. [*But see* DISSENT: Defendant's appeal must be dismissed, because no actual controversy exists: because defendant's Tier III sex-offender classification was not included in the judgment of conviction and sentence, there is no order in place requiring him to register as a sex offender, and the community-notification provisions and the residency restrictions have not attached; therefore, the sanctions of which defendant claims he was not properly informed have not been imposed, and the appellate court cannot grant relief based on unimposed sanctions.]"**

***State v. Pickens*, 2019-Ohio-4995**

**Postconviction: Death Penalty: Ineffective Assistance: Res Judicata**

**Full Decision:**
**http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-4994.pdf**

**Summary from the First District: "The findings of fact and conclusions of law denying the postconviction petition were not demonstrably the product of the common pleas court's failure to engage in the deliberative process mandated by R.C. 2953.21(C), and the court's verbatim adoption of the state's proposed findings of fact and conclusions of law did not provide a basis for reversal, when they adequately advanced their purposes.**

**"The common pleas court properly denied under the doctrine of res judicata petitioner's postconviction claim challenging trial counsel's effectiveness in failing to question or exercise a peremptory challenge to exclude a juror based on views expressed in his questionnaire concerning the death penalty and race, because the challenge could fairly have been, and was, determined on direct appeal.**

**"The common pleas court properly denied as unsupported petitioner's postconviction claims alleging trial counsel's ineffectiveness in preparing and presenting his case during the guilt and penalty phases of his trial, including counsel's alleged failure to present evidence to impeach the state's witnesses and demonstrate residual doubt and to present in mitigation lay and expert testimony concerning petitioner's learning disability and neuropsychological impairment.**

**"The common pleas court properly denied petitioner's postconviction claim alleging the discriminatory application of the death-penalty law in Hamilton County and Ohio, in the absence of evidence of racial discrimination in the imposition of the death penalty in petitioner's case.**

**"The common pleas court properly declined to afford petitioner either discovery to develop his postconviction claims or funding for experts to aid in that discovery, when his petition and its supporting evidentiary material did not demonstrate substantive grounds for relief.**

**"The doctrine of 'cumulative error' did not provide a basis for reversing petitioner's judgment of conviction, when the court of appeals discerned no error in the common pleas court's denial of his postconviction claims or in the court's refusal to afford him discovery to develop those claims."**

## Second Appellate District of Ohio

***State v. Hudson*, 2018-Ohio-4880**

**Complaint: Jurisdiction**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2018/2018-Ohio-4880.pdf**

**Summary from the Second District: "In the absence of a transcript of the plea hearing, we presume regularity regarding the trial court's compliance with Crim.R. 11(E), namely that the court advised appellant of the effect of his no contest plea on one count of failure to stop after an accident, a misdemeanor of the first degree. Regarding appellant's conviction for failure to comply with an order or signal of a police officer, the initial complaint charged the offense as a felony of the third degree, and the court accepted appellant's no contest plea to the offense as a misdemeanor of the first degree, without causing a complaint charging the misdemeanor offense to be filed, as required by Crim.R. 5(B)(6). In the absence of an amended complaint, the trial court acted without authority in convicting appellant of felony failure to comply, and analysis of whether the trial court complied with Crim.R. 11(F) by failing to recite the negotiated plea agreement for that offense on the record is not required. Having found that the trial court lacked authority to convict appellant of felony failure to comply, we need not consider the alleged ineffective assistance of defense counsel regarding the absence of a new complaint pursuant to Crim.R. 5(B)(6). Appellant's conviction for failure to stop is affirmed. Appellant's conviction for failure to comply is vacated, and the matter is remanded for proceedings consistent with this opinion."**

## Third Appellate District of Ohio

***State v. Lawson*, 2018-Ohio-4922**

**Waiver of Counsel**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2018/2018-Ohio-4922.pdf**

**The trial court erred in denying Appellant's motion to withdraw his no-contest plea where the record clearly demonstrated the trial court pressured Appellant into proceeding without counsel to a plea deal.**

## Fourth Appellate District of Ohio

***Nothing to report.***

## 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. Berry*, 2018-Ohio-4855**

**Ineffective Assistance**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-4855.pdf**

**Summary from the Eighth District: "Judgment is vacated, and the matter is remanded so counsel can file a motion to dismiss the indictment. The state's attempts to locate defendant lacked the requisite 'reasonable diligence' to commence the prosecution within the 20 year limitations period when the defendant was first arrested in 1995 for the offense, but the victim chose not to pursue the case and then the defendant was indicted one week prior to the 20 years after the investigator reopened the case based on a CODIS hit (on another male) from the victim's rape kit. The summons was returned via FedEx for a 'bad address' and the case was stagnant for nearly two years until the defendant was arrested. Consequently, nearly 22 years passed since the incident in January 1995. During the state's investigation in 2014, the investigator was aware that the defendant was making child support payments, but he did not seek out defendant's contact information through the county agency."**

## 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

***State v. Lark*, 2018-Ohio-4940**

**Evidence: Hearsay**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2018/2018-Ohio-4940.pdf**

**Summary from the Twelfth District: "The trial court did not err in excluding a written statement from being introduced into evidence under Evid.R. 804(D)(3), as appellant failed to demonstrate that the author of the statement was unavailable as a witness, as contemplated by Evid.R. 804(A)(5). Furthermore, appellants convictions for aggravated possession of methamphetamine, aggravated possession of fentanyl, and possession of cocaine were supported by sufficient evidence and were not against the manifest weight of the evidence."**

## Supreme Court of Ohio

***Nothing to report.***

## Sixth Circuit Court of Appeals

***Nothing to report.***

## Supreme Court of the United States

***Nothing to report.***