

## **Appellate Court Decisions - Week of 12/14/20**

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

### **First Appellate District of Ohio**

#### **State v. Garland, C-190712**

**Driver's license suspension**

**Full Decision:** (No web cite as of yet).

**Because R.C. 4510.46(C)(3) states that a trial court may only double an original license suspension after an ignition-interlock-device violation, the trial court erred in suspending appellant's license for seven years, when the original suspension was for three years; maximum suspension allowed was six years. Case remanded to reduce license suspension to no more than six years.**

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

#### **State v. Von Crossley, 2020-Ohio-6639**

**Ineffective assistance of appellate counsel**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2020/2020-Ohio-6639.pdf>**

**In reopened appeal of convictions for CCW, RSP, and improperly handling firearms in motor vehicle, appellate counsel was ineffective for failing to raise the issue of whether the CCW and improperly handling firearms convictions should have merged for purposes of sentencing as allied offenses, thus also finding trial counsel ineffective for failing to object. COA found those counts should have merges so case remanded.**

#### **State v. Von Crossley, 2020-Ohio-6640**

**Ineffective assistance of counsel**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2020/2020-Ohio-6640.pdf>**

**“[T]rial court erred by denying the first two ineffective assistance claims raised in Crossley's petition for postconviction relief without including a sufficient explanation as to why it discounted the credibility of the testimony in**

[appellant's] supporting affidavits." Appellant had averred that substitute trial counsel, whom he had never met, falsely told him he would be forced to trial the same day if he did not plead guilty. Remanded for the trial court to "examine [appellant's] supporting affidavits and consider all the relevant factors, including those specifically mentioned in *Calhoun*, [86 Ohio St.3d 279, 714 N.E.2d 905 (1999)], for purposes of determining the credibility of the affidavits and whether or not the affidavits present sufficient operative facts in support of [appellant's] first and second ineffective assistance claims." Trial court was also instructed to rule on appellant's fourth assignment of error alleging ineffective assistance of trial counsel for not completing the suppression hearing.

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

*Nothing to report.*

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

*Nothing to report.*

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

***State v. Miner, 2020-Ohio-5600***

Ineffective assistance of counsel

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2020/2020-Ohio-5600.pdf>

In conviction for prohibitions concerning companion animals, trial counsel was ineffective for failing to object to the introduction and admission of the body camera footage of a deputy's interaction with a witness where her statement on the video was contrary to her trial testimony, and jury could have used her video statements as evidence that appellant punched his dog.

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

***State v. McClellan, 2020-Ohio-5551***

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2020/2020-Ohio-5551.pdf>

**In conviction for OVI, trial court erred in sentencing appellant to a mandatory 30 months in prison where only the first 60 days of that term were mandatory. Sentence was contrary to law under R.C. 4511.19(G)(1)(d) and R.C. 2929.14(B)(4).**

***State v. Johns, 2020-Ohio-6652***

**Sufficiency; complicity to having weapons under disability**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2020/2020-Ohio-6652.pdf>**

**There was insufficient evidence to convict appellant of complicity to WUD where state failed to produce any evidence that appellant knew her co-defendant boyfriend was under a disability. Conviction vacated and case dismissed.**

***State v. Resendez, 2020-Ohio-6653***

**Consecutive sentences**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2020/2020-Ohio-6653.pdf>**

**Trial court failed to make the proper findings in order to impose consecutive sentences; there was no evidence in the record that the court found the offenses were committed in a “course of conduct.”**

***State v. Stull, 2020-Ohio-6654***

**Consecutive sentences**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2020/2020-Ohio-6654.pdf>**

**Trial court failed to make the findings in the sentencing entry “that consecutive sentences were necessary to protect the public from future crime or to punish the appellant.”**

**Seventh Appellate District of Ohio**

***Nothing to report.***

## **Eighth Appellate District of Ohio**

### **State v. Maldonado, 2020-Ohio-5616**

**Sentencing on specification; manifest weight - felonious assault**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-5616.pdf>**

**In conviction and sentence for a five-year drive-by shooting firearm specification attached to charge of discharge of a firearm on or near prohibited premises, the specification is not applicable to such underlying charge. The specification contained in “R.C. 2941.146 provides for a mandatory five-year prison term for offenders who commit ‘a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another[.]’ See *State v. Peoples*, 10th Dist. Franklin No. 18AP-850, 2019-Ohio-2141, ¶ 11. R.C. 2923.162 does not contain the mens rea of ‘purposely,’ and is instead a strict liability offense. See *State v. James*, 2015-Ohio-4987, 53 N.E.3d 770, ¶ 33 (8th Dist.). Therefore, the five-year drive-by specification is not applicable to this offense.” Appellate court also finds that the trial court erred by failing to give a jury instruction for aggravated assault, an inferior degree offense of felonious assault; appellant presented sufficient evidence of serious provocation at trial so an instruction on aggravated assault must be given.**

## **Ninth Appellate District of Ohio**

***Nothing to report.***

## **Tenth Appellate District of Ohio**

### **State v. Montgomery, 2020-Ohio-5594**

**Ineffective assistance of counsel**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2020/2020-Ohio-5594.pdf>**

**In conviction for aggravated murder following plea and imposition of the death penalty, trial court’s grant in part of appellee’s postconviction petition that he had received ineffective assistance of counsel during the mitigation phase is affirmed; case remanded for new mitigation/sentencing.**

## **Eleventh Appellate District of Ohio**

*Nothing to report.*

## **Twelfth Appellate District of Ohio**

*Nothing to report.*

## **Supreme Court of Ohio**

### **State v. Gideon, 2020-Ohio-5635**

**Suppression**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-5635.pdf>

**Summary from OSC: “We conclude that a medical license is a property right and that the threatened loss of the license is a form of coercion that can compromise the United States Constitution’s Fifth Amendment privilege against self-incrimination. That said, in order for coercion to be sufficient to warrant the suppression of statements made during a medical-board investigative interview, it must be both subjectively believed and objectively reasonable. In this case, competent, credible evidence supported the trial court’s factual finding that the doctor did not objectively believe that a refusal to answer truthfully questions posed by the medical-board investigator could lead to the loss of his medical license.” Court also held “that the court of appeals erred by determining that its remand order mooted an assignment of error relating to the sufficiency of the evidence. An assignment of error challenging the sufficiency of the evidence is potentially dispositive of a defendant’s conviction and may not be rendered moot by a remand on any other assignment of error.”**

### **State v. Dent, 2020-Ohio-6670**

**Sufficiency; engaging in pattern of corrupt activity**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-6670.pdf>

**Summary from OSC: “R.C. 2923.32—Engaging in a pattern of corrupt activity—The existence of an enterprise is established by showing that the organization is fully operational and engaging in a pattern of illicit activity—The time frame for the commission of a pattern of criminal conduct is**

**sufficient when the evidence shows that the corrupt activity is neither isolated nor so closely connected to be considered a single offense.” Court of appeal’s decision is reversed where “rational juror could reasonably infer from the activity and interactions observed in the surveillance-video evidence that the predicate offenses were not isolated, that appellees did not serendipitously find themselves in an up-and-running drug house and decide independently to cook crack cocaine and then weigh, bag, and sell it to customers who happened to enter the house.”**

### **State v. Graham, 2020-Ohio-6700**

Death penalty vacated

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-6700.pdf>

**Summary from OSC: “Aggravating circumstances do not outweigh mitigating factors.”**

**What is interesting is this bit of language in the opinion: “We recognize that we have upheld death sentences in other cases in which the offender was 19 or younger, had mental-health and substance-abuse issues, and had an unstable home life, see, e.g., State v. Raglin, 83 Ohio St.3d 253, 699 N.E.2d 482 (1998), and State v. Spivey, 81 Ohio St.3d 405, 692 N.E.2d 151 (1998). But those cases are distinguishable given developments in the case law on the weight to be given to the mitigating factors of youth and mental-health issues.” (Emphasis added).**

### **State v. Rue, 2020-Ohio-6706**

Community control

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-6706.pdf>

**Summary from OSC: “In order for an offender’s community-control term to be tolled based on absconding, the state must initiate revocation proceedings prior to the expiration date of the offender’s original community-control term.”**

### **State v. Simpson, 2020-Ohio-6719**

Ineffective assistance of appellate counsel

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-6719.pdf>

**Summary from OSC: “[T]he standard set out in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), which we adopted in *State v. Reed*, 74 Ohio St.3d 534, 535, 660 N.E.2d 456 (1996), applies to applications for reopening under App.R. 26(B).”**

***State v. Fazenbaker*, 2020-Ohio-6731**

**Breaking and entering; definition of unoccupied structure**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-6731.pdf>

**Summary from OSC: “A vacant trailer that is designed for overnight accommodation but is winterized and stored is an unoccupied structure pursuant to R.C. 2911.13(A).”**

***State v. Jones*, 2020-Ohio-6729**

**Sentencing**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-6729.pdf>

**Summary from OSC: “R.C. 2953.08(G)(2)(a) does not provide a basis for an appellate court to modify or vacate a sentence based on the lack of record support for the trial court’s findings made under R.C. 2929.11 and 2929.12—R.C. 2953.08(G)(2)(b) does not provide a basis for an appellate court to modify or vacate a sentence based on its view that the sentence is not supported by the record under R.C. 2929.11 and 2929.12.”**

***State v. Chapman*, 2020-Ohio-6730**

**Community control**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-6730.pdf>

**Summary from OSC: “A court must consider whether a community-control condition is reasonably related to rehabilitating the offender, has some relationship to the crime of which the offender was convicted, and relates to**

**conduct which is criminal or reasonably related to future criminality and serves the statutory ends of probation . . . One of the conditions of community control imposed by the court was that the man ‘make all reasonable efforts to avoid impregnating a woman’ during his sentence. The question before us is whether that condition was appropriate. We conclude that it was not.”**

### **Sixth Circuit Court of Appeals**

*Nothing to report.*

### **Third Circuit Court of Appeals - interesting fingerprint case**

**Travillion v. Superintendent Rockview SCI, No. 18-1282**

Fingerprint evidence

Full Decision:

<https://files.mail-list.com/m/oacdl/Travilion.pdf>

**In habeas action, Writ of Habeas Corpus is granted where there was insufficient evidence to convict appellant of robbery. “[I]n challenges to convictions involving fingerprints on movable objects, in the absence of evidence regarding when the fingerprints are made, the [prosecution] must marshal sufficient additional incriminating evidence so as to allow a rational juror to find guilt beyond a reasonable doubt . . . Although the [prosecution] may meet this burden with circumstantial evidence, the evidence must be sufficiently incriminating to support the conviction.” Quoting *United States v. Strayhorn*, 743 F.3d 917(4<sup>th</sup> Cir.2014).**

### **Supreme Court of the United States**

*Nothing to report.*