

## **Appellate Court Decisions - Week of 12/17/18**

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

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

#### **State v. Floyd, 2018-Ohio-5107**

##### **Expungement**

##### **Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-5107.pdf>

**Summary from the First District: “Where defendant was on community control for a separate misdemeanor conviction, she was not subject to pending criminal proceedings; and therefore, the trial court erred in overruling her R.C. 2953.52 motion to seal the records in three other criminal cases in which the complaints against her had been dismissed. State v. Blair, 2016-Ohio-5714, 62 N.E.3d 201 (1st Dist.), overruled. [But see DISSENT: Blair was not clearly wrongly decided, and therefore, it should not be overruled. Where the court in the separate misdemeanor case retains jurisdiction over defendant for the duration of her community-control sanction, pursuant to R.C. 2929.25(C), and over the suspended jail term on the separate conviction, pursuant to R.C. 2929.24(H), the misdemeanor case is a pending criminal proceeding.]”**

#### **State v. Pickens, 2018-Ohio-4994**

##### **Postconviction**

##### **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.”**

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

**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. Cox, 2018-Ohio-(not posted at time of e-mail)***

**Alibi: Burden of Proof: Plain Error**

**Full Decision:**

[https://www.hamiltoncountyohio.gov/UserFiles/Servers/Server\\_3788196/File/releases/2018/C-170638\\_12212018.pdf](https://www.hamiltoncountyohio.gov/UserFiles/Servers/Server_3788196/File/releases/2018/C-170638_12212018.pdf)

**Summary from the First District: “Where the trial court in a bench trial erroneously stated that defendant had the burden to prove his alibi by a preponderance of the evidence, the court did not commit plain error and defendant’s conviction will not be reversed, because no manifest miscarriage of justice occurred given the strength of the state’s case and the weakness of the alibi evidence.”**

**Second Appellate District of Ohio**

***State v. Milton, 2018-Ohio-4999***

**Statute of Limitations**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2018/2018-Ohio-4999.pdf>

**Summary from the Second District: “On appeal, following her no-contest plea to tampering with records (kept by governmental entity), defendant challenges the trial court’s denial of her motion to dismiss the indictment on statute of limitations grounds. The stipulated facts presented at the hearing on the motion established that the offense occurred in 2008, the corpus delicti was discovered by defendant’s probation officer in 2009, and defendant was indicted in 2016, beyond the six-year statute of limitations for the offense. The trial court’s finding that the BMV learned about the fraudulent driver’s license on September 15, 2015 was not supported by the record; that fact, although agreed upon by the parties on appeal, cannot be considered when reviewing the trial court’s decision. The one-year extension provided by R.C. 2901.13(B)(1) was not applicable. Judgment**

**reversed and defendant's conviction vacated."**

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

***State v. Marr, 2018-Ohio-5061***

**Speedy Trial: Interstate Agreement on Detainers**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2018/2018-Ohio-5061.pdf>**

**From the Opinion: "The State of Ohio brings this appeal from the July 9, 2018, judgment of the Van Wert County Common Pleas Court granting the motion to dismiss filed by defendant-appellee, Tyler Marr ('Marr'). On appeal, the State argues that the trial court erred by finding that Marr's handwritten letter filed with the trial court substantially complied with R.C. 2963.30, the Interstate Agreement on Detainers ('IAD'), and that as a result of erroneously finding substantial compliance in this case, the trial court erred in finding that the State failed to bring Marr to trial within 180 days of the receipt of his letter.**

**\* \* \***

**"Regardless of fault in this case, undoubtedly, pursuant to the stipulations of the parties, Marr caused his request to be delivered to both the trial court, where it was filed, then later it was received by the prosecutor. The letter contained Marr's request to have the matter resolved as soon as possible, and it contained the information on where Marr was incarcerated. There is also no explanation in the record for the additional delay of roughly one year from the time of the notification in April of 2017 to Marr's transport to Van Wert for arraignment in April of 2018. Based on the record before us, we cannot find that the trial court's determination that Marr's letter constituted substantial compliance under R.C. 2963.30, and that Marr's speedy trial rights thereunder were violated, was erroneous. Therefore, the State's assignment of error is overruled."**

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

***State v. Smith, 2018-Ohio-5020***

**Interstate Agreement on Detainers**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2018/2018-Ohio-5020.pdf>**

**From the Opinion: “After Ryan O. Smith pleaded no contest to multiple felonies, the trial court found him guilty, sentenced him to prison, and ordered restitution. Smith argues that the state violated his statutory right to a speedy trial under the Interstate Agreement on Detainers (IAD).**

**“Smith contends that Ohio placed a holder on him on September 29, 2016 while he was in a Texas jail. Thus, he believes the 180-day time period for the speedy trial calculation under the IAD began on January 13, 2017, when the Ross County Prosecutor received his request for disposition of the charges, and expired on July 12, 2017. However, the trial court found Smith was not detained until January 2017, thus his demands prior to that date were irrelevant. Accordingly the court implicitly rejected Smith’s contention that the Ross County Sheriff’s Office lodged a detainer against Smith in September 2016. Yet, the undisputed facts establish that the Ross County Sheriff’s Office lodged a detainer against Smith on September 29, 2016 by telling Texas to hold Smith on the Ross County warrant and Ross County would extradite him. Thus, the trial court should have considered Smith’s demands in late 2016 and 2017 to determine if he substantially complied with the IAD and triggered the 180-day time period. We sustain Smith’s first assignment of error.”**

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

*Nothing to report.*

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

***State v. Lu, 2018-Ohio-5009***

**Motion to Suppress: OVI**

**Full Decision:**

**<http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2018/2018-Ohio-5009.pdf>**

**Summary from the Sixth District: “Trial court did not err in relying on video evidence to grant appellee’s motion to suppress based on an unconstitutional traffic stop where the video showed that, rather than driving too slowly in the center lane, appellee was travelling at the prevailing rate of speed and was passing vehicles in the right lane.”**

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

*Nothing to report.*

## **Eighth Appellate District of Ohio**

### **State v. Robinson, 2018-Ohio-5036**

#### **Waiver of Counsel**

##### **Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-5036.pdf>**

**Summary from the Eighth District: “Trial court did not make sufficient inquiry to determine if the defendant understood and knowingly waived his right to counsel where the court did not adequately explain the nature of the charges to the defendant, and did not discuss with him any possible defenses and mitigating circumstances. The trial court also erroneously advised the defendant that he could not ask questions of appointed standby counsel. Thus, the defendant’s waiver of counsel was not knowingly, voluntarily, and intelligently made.”**

### **In re M.P., 2018-Ohio-5035**

#### **Juvenile: Sentencing: Serious Youthful Offender**

##### **Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-5035.pdf>**

**Summary from the Eighth District: “Trial court erred in finding that Appellant was serving ‘the juvenile portion of a serious youthful offender dispositional sentence’ at the time the state filed its motion to impose the adult portion of his SYO sentence. Appellant had been sentenced in two separate juvenile cases and the trial court ordered the two resulting sentences to be served consecutively. One of the cases had an SYO sentence and the other did not. At the time the state sought to impose appellant’s adult sentence, he was serving the non-SYO juvenile sentence and, therefore, did not qualify for imposition of his adult term under R.C. 2152.14(E). Appellant’s counsel provided ineffective assistance by offering a stipulation under R.C. 2152.14(E) to appellant’s prejudice.”**

## **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**

### **Girard v. Giordano, 2018-Ohio-5024**

**Double Jeopardy: R.C. 2937.07**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2018/2018-Ohio-5024.pdf>**

**From the opinion: “An Ohio statute provides that a no-contest plea to a misdemeanor charge ‘shall constitute an admission of the truth of the facts alleged in the complaint’ and that ‘the judge or magistrate may make a finding of guilty or not guilty from the explanation of the circumstances of the offense.’ R.C. 2937.07. John Giordano pleaded no contest to a charge of cruelty to animals for beating his dog. The trial court accepted the plea and found Giordano guilty but neglected to ask for an explanation of the circumstances. Because there was no explanation of the circumstances, the court of appeals reversed Giordano’s conviction and discharged him from further prosecution. The question before us relates to the discharge from prosecution: Does the Double Jeopardy Clause bar Giordano’s retrial? We say no.”**

### **State v. Braden, 2018-Ohio-5079**

**Sentencing: Court Costs**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2018/2018-Ohio-5079.pdf>**

**From the Opinion: “In this discretionary appeal and certified-conflict case, we consider the meaning of R.C. 2947.23(C), which provides that ‘[t]he court retains jurisdiction to waive, suspend, or modify the payment of the costs of prosecution, including any costs under section 2947.231 of the Revised Code, at the time of sentencing or at any time thereafter.’**

\* \* \*

**“We agreed to resolve this split of authority and to answer the following certified question: ‘ Does a trial court have jurisdiction, pursuant to the current version of R.C. 2947.23(C), to waive, modify or suspend court costs for those cases in which the defendant’s conviction and sentence became final prior to the enactment of \* \* \* R.C. 2947.23(C)?’ ‘ 151 Ohio St.3d 1523, 2018-Ohio-557, 91 N.E.3d 756, quoting the court of appeals’ November 2, 2017 entry.**

**“Before the enactment of R.C. 2947.23(C), a trial court lacked continuing jurisdiction to waive, suspend, or modify the payment of the costs of prosecution; the trial court could not retain jurisdiction that it had not yet been granted by this statute. We therefore answer the certified question in the negative and hold that R.C. 2947.23(C) does not authorize a trial court to waive, modify, or suspend the payment of court costs that were imposed prior to March 22, 2013, the effective date of R.C. 2947.23(C).”**

***State v. Bishop, 2018-Ohio-5132***

**Plea Hearing: Crim.R. 11(C)(2)(A): Postrelease Control**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2018/2018-Ohio-5132.pdf>**

**Summary from the Court:**

**“A trial court must advise a criminal defendant on postrelease control for a prior felony, during plea hearing in a new felony case, of trial court’s authority under R.C. 2929.141 to terminate defendant’s existing postrelease control and to impose a consecutive prison sentence for postrelease-control violation.”**

**“Defendant-appellee need not show prejudice because trial court completely failed to inform him that he could receive a consecutive prison sentence under R.C. 2929.141(A).”**

**Sixth Circuit Court of Appeals**

***Kelley v. Whitaker, No. 17-4210***

**Immigration: Aggravated Felony**

**Full Decision:**

**<http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0270p-06.pdf>**

**From the Opinion: “This case requires us to use the tools of statutory interpretation to determine whether a conviction for rape in Ohio is an aggravated felony under the Immigration and Nationality Act (‘INA’). The Fifth Circuit and the Board of Immigration Appeals (‘BIA’) previously considered this question and answered it in the negative. In the case before us, though, the BIA reversed course in a published decision and found that such a conviction is an aggravated felony under the INA. On review of all the relevant materials, we disagree with the BIA. A conviction for rape in Ohio can be committed by digital penetration, whereas the aggravated felony of rape under the INA cannot. Therefore, the Ohio conviction does not categorically fit within the federal definition, and the petitioner’s conviction is not an aggravated felony. Accordingly, we REVERSE.”**

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

*Nothing to report.*