

## **Appellate Court Decisions - Week of 12/24/18**

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

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

#### **State v. Bevins, 2018-Ohio-(Not available for e-mail)**

**Postconviction: Sentencing: Jail-Time Credit: Crim.R. 36**

**Full Decision:**

**[https://www.hamiltoncountyohio.gov/UserFiles/Servers/Server\\_3788196/File/releases/2018/C-170544\\_12282018.pdf](https://www.hamiltoncountyohio.gov/UserFiles/Servers/Server_3788196/File/releases/2018/C-170544_12282018.pdf)**

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

**“The common pleas court properly declined, because it had no jurisdiction, to grant the relief sought in defendant’s postconviction motion on the grounds that his judgment of conviction did not constitute a final appealable order and that he had been entitled to a sentencing hearing on remand: the claims were neither reviewable under any postconviction proceeding provided by statute or rule, nor correctable under a court’s jurisdiction to correct a void judgment.**”

**“The common pleas court erred in not correcting under Crim.R. 36 defendant’s jail-time credit: R.C. 2929.19(B)(2)(g)(iii) (now R.C. 2929.19(B)(2)(f)(iii)) did not confer continuing jurisdiction to correct the miscalculation of his jail-time credit, because he had been resentenced before the effective date of R.C. 2929.19(B)(2)(g) (now R.C. 2929.19(B)(2)(f)); but Crim.R. 36 authorized the correction, because the miscalculation resulted from a mistake in fact concerning the starting date of his preconviction confinement.”**

#### **State v. Jackson, 2018-Ohio-(Not available for e-mail)**

**Jurisdiction: Postconviction: Postrelease Control**

**Full Decision:**

**[https://www.hamiltoncountyohio.gov/UserFiles/Servers/Server\\_3788196/File/releases/2018/C-170703\\_12282018.pdf](https://www.hamiltoncountyohio.gov/UserFiles/Servers/Server_3788196/File/releases/2018/C-170703_12282018.pdf)**

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

**“Defendant’s postconviction motion, seeking relief on the grounds that his sentence was not imposed in conformity with the statutes governing postrelease control, was not reviewable by the common pleas court under**

**R.C. 2953.21 et seq. as a postconviction petition or under any other postconviction procedure provided by rule or statute.**

**“The postrelease-control portion of defendant’s felonious-assault sentence was subject to correction as void, when the trial court improperly imposed postrelease control for a merged felonious-assault count, misadvised defendant at sentencing concerning the sanction’s duration and mandatory nature, and misstated in the judgment of conviction its duration.”**

## **Second Appellate District of Ohio**

*Nothing to report.*

## **Third Appellate District of Ohio**

*Nothing to report.*

## **Fourth Appellate District of Ohio**

***State v. Mack, 2018-Ohio-5165***

**Sentencing: Allied Offenses: Failure to Appear**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2018/2018-Ohio-5165.pdf>**

**The trial court erred in failing to merge two counts of failure to appear that arose out of a single failure to appear.**

## **Fifth Appellate District of Ohio**

*Nothing to report.*

## **Sixth Appellate District of Ohio**

***Toledo v. McDuffey, 2018-Ohio-5198***

**Witnesses**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2018/2018-Ohio-5198.pdf>**

**Summary from the Sixth District: “The trial court abused its discretion by excluding appellant’s witnesses, disclosed on the day of trial, without**

conducting an inquiry into the reason for the delay or considering less severe sanctions.”

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

*Nothing to report.*

### **Eighth Appellate District of Ohio**

*Nothing to report.*

### **Ninth Appellate District of Ohio**

*Nothing to report.*

### **Tenth Appellate District of Ohio**

*Nothing to report.*

### **Eleventh Appellate District of Ohio**

#### **State v. Miller, 2018-Ohio-5192**

#### **Postconviction Relief**

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

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2018/2018-Ohio-5192.pdf>

Appellant’s postconviction motion is remanded for “the trial court to exercise its discretion and determine whether the affidavit is credible and presents substantive grounds for postconviction relief.” This was done because the trial court denied the postconviction motion based on res judicata, which is improper.

#### **State v. Mullen, 2018-Ohio-5188**

#### **Search: Motion to Suppress**

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

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2018/2018-Ohio-5188.pdf>

The trial court erred in denying Appellant’s motion to suppress the search of her purse because the circumstances did not provide the police officer

with a reasonable suspicion that criminal activity was afoot to justify her detention. The officer was only suspicious of Appellant because she was with a man who had a warrant out for serious crimes, and upon questioning, she said she was not aware of any drugs in the vehicle. This was not a particularized suspension, and Appellant's continued detention was illegal.

## **Twelfth Appellate District of Ohio**

*Nothing to report.*

## **Supreme Court of Ohio**

### **State v. Cupp, 2018-Ohio-5211**

#### **Jail-Time Credit**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2018/2018-Ohio-5211.pdf>

**Syllabus of the Court: "A defendant is not entitled to jail time credit while held on bond if, at the same time, the defendant is serving a sentence on an unrelated case."**

### **State v. Tench, 2018-Ohio-5205**

#### **Aggravated Murder: Capital Punishment**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2018/2018-Ohio-5205.pdf>

**The Supreme Court reversed the trial court's judgment convicting Appellant of aggravated robbery a specification to three counts, which alleged that he committed aggravated murder while committing aggravated robbery under R.C. 2929.04(A)(7). It also dismissed the specification. It otherwise affirmed the convictions and sentences, including the death penalty. The defendant disposed of the victim's purse after murdering her, and that was not sufficient evidence that Appellant's purpose was to deprive the victim of the purse.**

## **Sixth Circuit Court of Appeals**

*Nothing to report.*

**Supreme Court of the United States**

***Nothing to report.***