

Appellate Court Decisions - Week of 2/1/21

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

First Appellate District of Ohio

State v. Smith, C-190419

Sufficiency; telecommunication harassment

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

There was insufficient evidence to convict appellant of telecommunication harassment because city failed to establish beyond a reasonable doubt that appellant's "specific purpose" in sending a Facebook friend request to the maternal grandmother of his son was to threaten her. Conviction vacated and appellant discharged from further prosecution.

State v. Veite, C-190339

Guilty plea

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

Appellant's guilty plea was not made knowingly, voluntarily, and intelligently where the trial court failed to advise him that his guilty plea was a complete admission of his guilt. Crim.R. 11(B)(1) and (E).

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

State v. Brickles, 2021-Ohio-178

Consecutive sentences

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2021/2021-Ohio-178.pdf>

Trial court erred in imposing consecutive sentences without making the

requisite findings at the sentencing hearing in accordance with R.C. 2929.14(C)(4).

State v. Powers, 2020-Ohio-7042

Sufficiency; endangering children and intimidating victim

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2020/2020-Ohio-7042.pdf>

There was insufficient evidence to convict appellant of endangering children and intimidating a victim where no evidence was presented that appellant was in *loco parentis* to the victim, as he was simply the live-in boyfriend of the mother of the victim; and there was no evidence of a “threat of harm” to intimidate the victim.

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. Stansell, 2021-Ohio-203

Sentence; sexually-violent predator specification

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-203.pdf>

Previously, a “[c]onviction of a sexually violent offense cannot support the specification that the offender is a sexually violent predator as defined in R.C. 2971.01(H)(1) if the conduct leading to the conviction and the sexually violent predator specification are charged in the same indictment,” *see State v. Smith*, 104 Ohio St.3d 106, 2004-Ohio-6328, 818 N.E.2d 283; therefore, the trial court erred in not vacating appellant’s sexually-violent predator specification on reconsideration. At that time of his original sentencing in 1998, appellant did not qualify as a sexually violent predator because he did not have any prior sexual-oriented offenses; and the amendment to R.C. 2971.01(H)(1), which

eliminated the requirement of a prior sexual offense, could not be applied to appellant because that would violate the Ex Post Facto Clause. *See State v. Townsend*, Slip Opinion 2020-Ohio-5586.

And even though appellant's sentence was agreed, it was clearly contrary to law under R.C. 2953.08 and *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923. Therefore, the COA vacated appellant's life tail.

The Eighth District goes on to distinguish this case from the *Harper/Henderson* recent line of cases out of the OSC regarding void v. voidable sentences. "The Ohio Supreme Court did consider the universal application of *Harper* on sentencing after our decision in *Stansell III*, when it released *State v. Henderson*, Slip Opinion 2020-Ohio-4784, and held that a 'sentence is void only if the sentencing court lacks jurisdiction over the subject matter of the case or personal jurisdiction over the accused.' *Henderson* at ¶ 27. In *Henderson*, the trial court was statutorily required to sentence the defendant to a life tail, but did not do so. The state, 18 years later, sought to impose the life tail. The Ohio Supreme Court held that the sentence was not void because the trial court had jurisdiction over the case and the defendant, and the state had had a full and fair opportunity to object to or challenge the trial court's sentence and did not. This case is different from *Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, and *Henderson* because, here, [appellant] is serving more time than what was statutorily permitted at the time he was indicted and sentenced. The same was not true for the defendants in *Harper* and *Henderson*. The sentence in this case, therefore, implicates [appellant's] constitutional rights."

I see this one heading up to the OSC to flesh out this argument more fully.

***State v. Young*, 2021-Ohio-215**

Sentence; Reagan Tokes and NGRI finding

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-215.pdf>

In state's appeal, the trial court did not commit plain error in concluding it had jurisdiction of a NGRI acquittee, found not guilty of aggravated burglary, for only 11 years as opposed to 11 to 16.5 years under Reagan Tokes. The period beyond 11 years could only be extended by the Ohio Department of Rehabilitation and Corrections which was impossible, as the appellant was not imprisoned.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

State v. Williams, 2021-Ohio-241

Capital postconviction petition

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2021/2021-Ohio-241.pdf>

Trial court abused its discretion in excluding the testimony of appellant’s “teaching expert” where it appeared “that a need existed for the record to include further education and understanding at least with regard to adaptive behavior deficits and the ABAS-3, which was administered by both the defense expert and the state expert.” The COA further held that the parties were permitted to submit updated expert evaluations and supplement their experts’ testimony, as the OSC’s recent decision regarding intellectual disability in *State v. Ford*, 58 Ohio St.3d 139, 2019-Ohio-4539, 140 N.E.3d 616 had been decided before the postconviction hearing was held in this matter; and *Ford* set forth an updated three-part test.

State v. Carter, 2021-Ohio-242

Sufficient evidence; speeding

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2021/2021-Ohio-242.pdf>

There was insufficient evidence to convict appellant of speeding where the qualifications of the police officer using a radar device were not proven.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.