

Appellate Court Decisions - Week of 2/10/14

First Appellate District of Ohio

In Re: D.P., 2014-Ohio-467

Delinquency: Robbery: Motion to Dismiss: Appeal

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130293_02122014.pdf

Summary from the First District:

“The juvenile court erred in placing the juvenile on probation and ordering him to attend Hillcrest School after he had been adjudicated delinquent for a specification that he had used a firearm to facilitate an aggravated robbery: following the adjudication for the facilitation specification, the court was required, under R.C. 2152.17(A)(2), to commit the juvenile to the Department of Youth Services.

“Even though the juvenile court had held the juvenile’s motion to dismiss a firearm specification in abeyance and had not dismissed the specification at the time the state filed its notice of appeal, the issue was ripe for appeal: because the court did not have the discretion to dismiss the specification under R.C. 2152.17(A)(2), the motion to dismiss was a nullity, and the juvenile court’s decision to hold the motion in abeyance was itself erroneous.”

State v. Sanders, 2014-Ohio-511

OVI: Motion to Suppress

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130193_02142014.pdf

Summary from the First District:

“The trial court erred in granting the defendant’s motion to suppress on the basis that the police officer lacked probable cause to arrest the defendant because, even without considering the results of the field-sobriety tests, the evidence, which showed that the defendant was going 14 m.p.h. over the posted speed limit, was weaving in his lane of travel, was not within his lane of travel when stopping at an intersection, had a moderate odor of alcohol on his breath, had bloodshot, glassy eyes, and had admitted to having ‘some drinks,’ was sufficient to warrant a prudent police officer in believing that the defendant had been operating a motor vehicle while under the influence of alcohol.”

State v. Alexander, 2014-Ohio-510

Sentencing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130171_02142014.pdf

Summary from the First District:

“The trial court erred in imposing consecutive sentences without first having made the findings required by R.C. 2929.14(C)(4).”

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

State v. Love, 2014-Ohio-437

Sentencing: Merger: Arson: Vandalism

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/3/2014/2014-ohio-437.pdf>

The trial court erred in failing to merge Appellant’s vandalism and arson convictions against one of his victims.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

State v. Scott, 2014-Ohio-456

Alford Plea

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/5/2014/2014-ohio-456.pdf>

Because a guilty plea waives a defendant’s right to challenge the sufficiency or weight of the evidence on appeal, and an *Alford* plea has the same legal effect as a guilty plea, Appellant waived his right to challenge the sufficiency and weight of the evidence on appeal when he entered an *Alford* plea.

Sixth Appellate District of Ohio

State v. Nelson, 2014-Ohio-424

Jury Instruction

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2014/2014-ohio-424.pdf>

While it was error for the trial court to find as a matter of law that the victim in Appellant's gross sexual imposition trial was not his spouse, the error was harmless where there was undisputed evidence in the record that the victim was Appellant's child and not his spouse.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

State v. Gum, 2014-Ohio-401

Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-401.pdf>

The trial court failed to advise Appellant of his appellate rights at his original sentencing hearing. He thereafter filed an untimely notice of appeal. That prompted him to file a motion for resentencing (postconviction relief) in the trial court, which it erred in denying because he had not be advised of his appellate rights. Therefore, "[t]he appropriate avenue for relief is for the trial court to reenter the judgment of conviction against [the Appellant], thereby reinstating the time within which he may timely file a notice of appeal pursuant to App.R. 4."

State v. Jones, 2014-Ohio-496

Search: Vehicle

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2014/2014-ohio-496.pdf>

The trial court did not err in granting Appellant's Motion to Suppress. Here, the police officer stopped Appellant's vehicle because he could not read the rear license plate, which was covered by a tinted license plate cover. When the police officer approached Appellant's car, however, he had no problem reading the plate. Because the officers involved provided no separate and articulable reason to continue Jones' detention, the traffic stop should not have continued and granting the Motion to Suppress was proper.

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

Nothing new.

Eleventh Appellate District of Ohio

State v. Gibson, 2014-Ohio-433

Sentencing: Probation

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/11/2014/2014-ohio-433.pdf>

Where Appellant's probation violation alleged two broken rules, the trial court erred at her probation violation hearing in not specifying which (or whether both) of the rules was violated.

Twelfth Appellate District of Ohio

State v. Honeycutt, 2014-Ohio-352

Venue

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/12/2014/2014-ohio-352.pdf>

Summary from Judge Rodenberg:

Facts:

“Appellant appeals his convictions for drug-related crimes, possession of criminal tools, and engaging in a pattern of corrupt activity. Appellant was charged with several crimes in Warren County after a police investigation revealed that a teenager was selling marijuana to other teens. The teenage dealer, his supplier, and several other suppliers were arrested. Appellant was arrested when officers executed a warrant on his warehouse, where marijuana was being grown.”

Analysis:

“Venue in Warren County was improper where the state failed to demonstrate that any element of engaging in a pattern of corrupt activity occurred in Warren County. The state did not present sufficient evidence that appellant had an association-in-fact enterprise with the teenage dealer or the teenage dealer’s direct supplier. Further, the state did not present evidence that appellant had a significant nexus with Warren County.”

State v. Francis, 2014-Ohio-443

Post-Conviction Relief: Notice of Appeal

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/12/2014/2014-ohio-443.pdf>

Summary from Judge Rodenberg:

Facts:

“Appellant appeals from a decision denying his petition for postconviction relief, arguing he presented sufficient evidence to demonstrate that his trial counsel provided him with ineffective assistance by giving him erroneous sentencing information and by not filing a timely notice of appeal of his conviction, in order to preserve his rights to a direct appeal.”

Analysis:

- “A trial court's decision summarily denying a postconviction (PCR) petition filed under R.C. 2953.21 will be reviewed under an abuse-of-discretion standard. The trial court did not abuse its discretion in denying appellant's ineffective-assistance claim in his PCR petition regarding erroneous sentencing information because appellant's argument that he was promised that he would be sentenced to only a 10-year prison term is contradicted by his statement during his plea colloquy with the trial court at his sentencing that the only promise he received in return for his guilty plea was that the state would delete the language in the indictment regarding the age of his victims. Additionally, the transcript of appellant's sentencing hearing shows that the trial court informed him that he could receive as much as a 40-year plus sentence for his offenses. While appellant's trial counsel did state in his affidavit that during plea negotiations, it was his understanding that if appellant pled guilty, he would receive a sentence of ten years imprisonment, counsel did not state in his affidavit that he promised appellant that he would receive only a ten-year sentence. Furthermore, there is nothing in the transcript of the sentencing hearing to show that either appellant or his trial counsel were surprised when the trial court ordered appellant to serve his concurrent ten-year terms on counts three and four consecutive to his concurrent ten-year terms on counts one and two.”

-“The trial court erred in denying appellant's ineffective-assistance claim regarding his trial counsel's failure to file a timely notice of appeal on appellant's behalf on the basis that it lacked jurisdiction to rule on the claim. The trial court improperly characterized appellant's claim as stating that ‘he was denied effective assistance of counsel as the appellate court rejected his Notice of Appeal as untimely[,]’ and then improperly dismissed the claim on the basis that the trial court ‘lacks jurisdiction to counter or overturn a decision by an appellate court as to whether or not [appellant] timely filed a Notice of Appeal.’ The trial court's ruling missed the point of appellant's argument, as appellant was not asking the trial court ‘to counter or overturn’ the court of appeals' decision as to whether or not appellant filed a timely notice of appeal. Instead, appellant was arguing that his trial counsel provided him with ineffective assistance by failing to file a timely notice of appeal. The trial court erred by refusing to rule on this claim on the ground that it lacked jurisdiction to rule on it. Consequently, the case is remanded with instructions for the trial court rule on appellant's claim.”

State v. Koller, 2014-Ohio-450

Allied Offenses: Due Process

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/12/2014/2014-ohio-450.pdf>

Summary from Judge Rodenberg:

Facts:

“Defendant appeals his sentence for forgery and receiving stolen property.”

Analysis:

-“ The receiving stolen property and forgery offenses were not allied offenses of similar import as they were committed separately. Appellant completed the receiving stolen property offense when he [took] two checks from his grandparents’ house without their permission. Appellant then later separately completed the forgery offenses when he had the checks forged and attempted to cash the checks at a bank.”

- “Trial court erred when it sua sponte found portions of R.C. 2929.13(B) unconstitutional without giving the parties notice that it intended to consider the constitutionality of the statute and an opportunity to respond.”

Supreme Court of Ohio

State v. Miranda, 2014-Ohio-451

Allied Offenses: RICO

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/0/2014/2014-ohio-451.pdf>

State v. Johnson, 128 Ohio St.3d 153, is not applicable to a RICO (R.C. 2923.32(A)(1)) violation. Therefore, a RICO offenses does not merge with its predicate offenses for sentencing purposes.

R.C. 1.58(B): H.B. 86: Sentencing

Full Decision: <http://www.sconet.state.oh.us/rod/docs/pdf/o/2014/2014-ohio-460.pdf>

Where the Appellant was charged with a fifth-degree felony theft for stealing \$550 worth of cologne from a Sears, but before he was sentenced the law was changed so that thefts below \$1,000 were first-degree misdemeanors, the Appellant was properly convicted of a felony, but also properly sentenced as a misdemeanor.

The question certified to the Supreme Court was “whether the defendant may benefit from the decrease in a classification and penalty of an offense enacted by the General Assembly that becomes effective after commission of the offense but before sentencing on that offense.”

“On July 23, 2011, Lucious Taylor stole \$550 worth of cologne from a Sears store. At that time, R.C. 2913.02 classified that theft offense as a fifth-degree felony. However, prior to sentencing, the General Assembly enacted Am.Sub.H.B. No. 86 (“H.B. 86”), effective September 30, 2011, which amended several sections of the criminal code to decrease the offense classifications, thereby reducing the penalty or punishment for some offenses, and among other changes made theft of property valued at less than \$1,000 a first-degree misdemeanor and correspondingly reduced the maximum punishment for the offense. On December 27, 2011, the trial court convicted Taylor of a misdemeanor and sentenced him for that offense. The appellate court, in a two-to-one decision, reversed the trial court and held that because nothing in H.B. 86 provided that Taylor was entitled to benefit from the decrease in classification of the theft offense, he should have been convicted of a felony, but had been correctly sentenced as a misdemeanor.

“The outcome of this case is directly affected by R.C. 1.58(B), which specifies that if the penalty or punishment for an offense has been reduced by amendment of a statute, the reduced penalty or punishment shall be imposed unless had been previously imposed.

“We answer the certified question in the affirmative and conclude that the legislature intended to afford the benefit of a decreased theft offense classification to offenders like Taylor, and therefore the trial court properly convicted and sentenced him for a misdemeanor violation.”

Sixth Circuit Court of Appeals

Miller v. Stovall, No. 12-2171

Confrontation Clause: Suicide Note

Full Decision: <http://www.ca6.uscourts.gov/opinions.pdf/14a0031p-06.pdf>

The trial court did not err in admitting into evidence at trial the suicide note of the defendant's co-conspirator in murdering her husband. The co-conspirator's suicide note implicated her in her husband's murder, and the trial court found the statements in the note to be trustworthy.

Supreme Court of the United States

Nothing new.