

Appellate Court Decisions - Week of 2/10/20

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

First Appellate District of Ohio

State v. Buie, 2020-Ohio-448

Forfeiture

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2020/2020-Ohio-448.pdf>

Trial court erred in ordering the forfeiture of \$2,700 in addition to imposing a sentence for obstruction of official business where the complaint did not contain the necessary forfeiture specification related to the seized cash, and the relevant provisions contained in R.C. Chapter 2981 dealing with forfeiture were not complied with; and as state does not contest appellant's claim, case is remanded with instructions to the trial court to return money to appellant.

Second Appellate District of Ohio

State v. Poulter, 2020-Ohio-396

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2020/2020-Ohio-396.pdf>

Trial court erred by imposing a community control sanction sentence of 12 months local jail time for fifth-degree felony when maximum time for a community control sanction is six months; sentence reversed as contrary to law.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

State v. Bond, 2020-Ohio-398

Structural error; restricting access to courtroom

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2020/2020-Ohio-398.pdf>

Trial court committed structural error by partially closing murder trial to public and restricting access to courtroom based on incident outside the courtroom; court did not meet *Waller v. Georgia*, 467 U.S. 39 requirements nor set forth a substantial reason for the partial closure as set forth in *State v. Drummond*, 111 Ohio St.3d 14.

State v. K.M., 2020-Ohio-450

Sealing of record

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2020/2020-Ohio-450.pdf>

Trial court erred in denying appellant's applications for sealing of four separate misdemeanor convictions without allowing her to put on evidence, by failing to provide determinations as to her rehabilitation, and by summarily denying the applications "based merely on the nature of the offense."

State v. Murphy, 2020-Ohio-453

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2020/2020-Ohio-453.pdf>

Trial court erred by committing appellant to a term of community control for one felony count, consecutive to a term of imprisonment for another felony count, as that sentence was contrary to law in accordance with *State v. Hitchcock*, 157 Ohio St.3d 215.

State v. Jewell, 2020-Ohio-479

Protection order

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2020/2020-Ohio-479.pdf>

Trial court erred by accepting appellant's guilty plea and finding him guilty of violation of a protection order where domestic relations court had previously denied the civil protection order and issued an entry of expungement prior to appellant's plea; state conceded error.

Sixth Appellate District of Ohio

State v. Ridley, 2020-Ohio-402

Insufficient evidence; corrupting another with drugs

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2020/2020-Ohio-402.pdf>

Conviction for corrupting another with drugs was based on insufficient evidence where appellant sold drugs to a person who provided those drugs to a third party who overdosed; there was no evidence that appellant knew drugs would be furnished to third party, and R.C. 2925.02(A)(3) does not state "any other person," but limits it to the person whom the drugs were furnished.

State v. Gessel, 2020-Ohio-403

Consecutive sentences

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2020/2020-Ohio-403.pdf>

Trial court erred in imposing consecutive sentences by failing to find that appellant's two offenses were committed as part of one or more courses of conduct. R.C. 2929.14(C)(4)(b).

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Trone, 2020-Ohio-384

Postrelease control

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2020/2020-Ohio-384.pdf>

Trial court erred in denying appellant's motion to vacate postrelease control, as appellant has been released from prison and trial court lacks authority to correct his improperly imposed postrelease control.

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

State v. Poulter, 2020-Ohio-415

Driving privileges

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2020/2020-Ohio-415.pdf>

Trial court erred in denying appellant's motion for limited driving privileges where court erroneously applied the ten-year look-back period set forth in newly amended R.C. 4510.13(A)(3) when the version of that statute in affect at the time of appellant's conviction for OVI in 2016 called for a six-year look-back period, and amended version did not contain express language making it retroactive.

Supreme Court of Ohio

State v. Craig, 2020-Ohio-455

Final, appealable order

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2020/2020-Ohio-455.pdf>

Summary from OSC: *“A conviction on one count of a multicount indictment is not a final, appealable order when other counts remain pending after a mistrial,”* but *“When a criminal defendant is convicted and sentenced on fewer than all counts of a multicount indictment and the state is prevented from retrying the defendant on the remaining counts due to a finding that the defendant is incompetent to stand trial, the incompetency finding operates to sever the charges and the defendant may appeal his conviction and sentence.”*

To be honest, I cannot explain or really understand the majority’s reasoning; my suggestion is to read Kennedy’s concurrence in judgment only opinion which brings to light the difficulties of what rule of law the majority has created. Here is a brief summary from that:

“I agree that the trial court’s judgment entry sentencing appellant, Steven Craig, to prison on two counts of felonious assault is final and permits him to pursue an appeal—notwithstanding the trial court’s inability to resolve the third count of the indictment charging him with rape—and therefore concur in the judgment to reverse the dismissal of his appeal by the First District Court of Appeals. I write separately, however, because courts and litigants alike need clear guidance regarding when a judgment of conviction is final and appealable, not a loophole unlikely to apply to other situations than the one in this particular case. A defendant is entitled to timely appellate review when criminal punishment has been imposed, and the trial court’s decision to proceed to sentencing on some but not all counts of the indictment resulted in a judgment of conviction that is final and appealable pursuant to Article IV, Section 3(B)(2) of the Ohio Constitution and R.C. 2953.02. Therefore, I concur in judgment only.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.