Appellate Court Decisions - Week of 2/25/19

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

First Appellate District of Ohio

Nothing to report.

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

***State v. Blackshear*, 2019-Ohio-655**

Right to Counsel

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2019/2019-Ohio-655.pdf

Summary from the Sixth District: "Where the trial court failed to engage in a colloquy on the record into whether the defendant's waiver of his right to counsel was knowingly, intelligently, and voluntarily given, his OVI conviction must be vacated and the matter remanded for a new trial."

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***Cleveland v. Norman*, 2019-Ohio-697**

Resisting Arrest: Sufficiency

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-697.pdf

Summary from the Eighth District: "Because the evidence demonstrated that the defendant was not under arrest when he allegedly struck a highway patrol trooper in the chest, and that he did not engage in any physical activity to prevent or delay his arrest, the state failed to prove essential elements of the offense of resisting arrest, and the evidence was therefore insufficient to support the defendant's conviction for resisting arrest under R.C. 2921.33(A)."

***State v. Mills*, 2019-Ohio-706**

Restitution

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-706.pdf

Summary from the Eighth District: "The defendant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. The trial court's order for restitution was improper as it included amounts for the victim's new security system and locks."

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

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

***Garza v. Idaho*, 586 U.S. ___ (2019)**

Sixth Amendment: Appeals

Full Decision:
https://www.supremecourt.gov/opinions/18pdf/17-1026_2c83.pdf

Summary from the SCOTUS website: "The presumption of prejudice for Sixth Amendment purposes recognized in *Roe v. Flores-Ortega*, 528 U. S. 470, applies regardless of whether a defendant has signed an appeal waiver."

Syllabus:

"Petitioner Gilberto Garza, Jr., signed two plea agreements, each arising from state criminal charges and each containing a clause stating that Garza waived his right to appeal. Shortly after sentencing, Garza told his trial counsel that he wished to appeal. Instead of filing a notice of appeal, counsel informed Garza that an appeal would be 'problematic' given Garza's appeal waiver. After the time period for Garza to preserve an appeal lapsed, he sought state postconviction relief, alleging that his trial counsel had rendered ineffective assistance by failing to file a notice of appeal despite his repeated requests. The Idaho trial court denied relief, and the Idaho Court of Appeals affirmed. Also affirming, the Idaho Supreme Court held that Garza could not show the requisite deficient performance by counsel and resulting prejudice. In doing so, the court concluded that the presumption of prejudice recognized in *Roe v. Flores-Ortega*, 528 U. S. 470, when trial counsel fails to file an appeal as instructed does not apply when the defendant has agreed to an appeal waiver.

"*Held: Flores-Ortega*'s presumption of prejudice applies regardless of whether a defendant has signed an appeal waiver. Pp. 3–14.

"(a) *Under Strickland v. Washington*, 466 U. S. 668, a defendant who claims ineffective assistance of counsel must prove (1'that counsel's representation fell below an objective standard of reasonableness,' *id.*, at 687–688, and (2) that any such deficiency was 'prejudicial to the defense,' *id.*, at 692. However, 'prejudice is presumed' in 'certain Sixth Amendment contexts,' *ibid.*, such as 'when counsel's constitutionally deficient performance deprives a defendant of an appeal that he otherwise would have taken,' *Flores-Ortega*, 528 U. S., at 484. Pp. 3–4.

"(b) This case hinges on two procedural devices: appeal waivers and notices of appeal. No appeal waiver serves as an absolute bar to all appellate claims. Because a plea agreement is essentially a contract, it does not bar claims outside its scope. And, like any contract, the language of appeal waivers can vary widely, leaving many types of claims unwaived. A waived appellate claim may also proceed if the prosecution forfeits or waives the waiver or if the Government breaches the agreement. Separately, some claims are treated as unwaiveable. Most fundamentally, courts agree that defendants retain the right to challenge whether the waiver itself was knowing and voluntary.

"The filing of a notice of appeal is 'a purely ministerial task that imposes no great burden on counsel.' *Flores-Ortega*, 528 U. S., at 474. Filing requirements reflect that appellate claims are likely to be ill defined or unknown at the filing stage. And within the division of labor between defendants and their attorneys, the 'ultimate authority' to decide whether to 'take an appeal' belongs to the accused. *Jones v. Barnes*, 463 U. S. 745, 751. Pp. 4–7

"(c) Garza's attorney rendered deficient performance by not filing a notice of appeal in light of Garza's clear requests. Given the possibility that a defendant will end up raising claims beyond an appeal waiver's scope, simply filing a notice of appeal does not necessarily breach a plea agreement. Thus, counsel's choice to override Garza's instructions was not a strategic one. In any event, the bare decision whether to appeal is ultimately the defendant's to make. Pp. 7–8.

"(d) Because there is no dispute that Garza wished to appeal, a direct application of *Flores-Ortega*'s language resolves this case. *Flores-Ortega* reasoned that because a presumption of prejudice applies whenever ' 'the accused is denied counsel at a critical stage,' ' it makes greater sense to presume prejudice when counsel's deficiency forfeits an 'appellate proceeding altogether.' 528 U. S., at 483. Because Garza retained a right to appeal at least some issues despite his waivers, he had a right to a proceeding and was denied that proceeding altogether as a result of counsel's deficient performance. That he surrendered many claims by signing appeal waivers does not change things. First, the presumption of

prejudice does not bend because a particular defendant seems to have had poor prospects. See, e.g., *Jae Lee v. United States*, 582 U. S. ___, ___. Second, while the defendant in *Flores-Ortega* did not sign an appeal waiver, he did plead guilty, which 'reduces the scope of potentially appealable issues' on its own. 528 U. S., at 480. Pp. 8–10.

"(e) Contrary to the argument by Idaho and the U. S. Government, as amicus, that Garza never 'had a right' to his appeal and thus that any deficient performance by counsel could not have caused the loss of any such appeal, Garza did retain a right to his appeal; he simply had fewer possible claims than some other appellants. The Government also proposes a rule that would require a defendant to show— on a case-by-case basis—that he would have presented claims that would have been considered by the appellate court on the merits. This Court, however, has already rejected attempts to condition the restoration of a defendant's appellate rights forfeited by ineffective counsel on proof that the defendant's appeal had merit. See, e.g., *Rodriquez v. United States*, 395 U. S. 327, 330. Moreover, it is not the defendant's role to decide what arguments to press, making it especially improper to impose that role upon the defendant simply because his opportunity to appeal was relinquished by deficient counsel. And because there is no right to counsel in postconviction proceedings and, thus, most applicants proceed pro se, the Government's proposal would be unfair, ill advised, and unworkable. Pp. 10–14. 162 Idaho 791, 405 P. 3d 576, reversed and remanded."

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, KAGAN, and KAVANAUGH, JJ., joined.

THOMAS, J., filed a dissenting opinion, in which GORSUCH, J., joined, and in which ALITO, J., joined as to Parts I and II.

***Madison v. Alabama*, 596 U.S. ___ (2019)**
Eighth Amendment: Capital Punishment: Mental Health

Full Decision:
https://www.supremecourt.gov/opinions/18pdf/17-7505_2d9g.pdf

Summary from the SCOTUS website: "The Eighth Amendment may permit executing a prisoner even if he cannot remember committing his crime but it may prohibit executing a prisoner who suffers from dementia or another disorder rather than psychotic delusions."

Syllabus:

"In *Ford v. Wainwright*, 477 U. S. 399, this Court held that the Eighth Amendment's ban on cruel and unusual punishments precludes executing a prisoner who has 'lost his sanity' after sentencing. *Id.*, at 406. And in

***Panetti v. Quarterman*, 551 U. S. 930, the Court set out the appropriate competency standard: A State may not execute a prisoner whose 'mental state is so distorted by a mental illness' that he lacks a 'rational understanding' of "the State's rationale for [his] execution.' *Id.*, at 958–959.**

"Petitioner Vernon Madison was found guilty of capital murder and sentenced to death. While awaiting execution, he suffered a series of strokes and was diagnosed with vascular dementia. In 2016, Madison petitioned the state trial court for a stay of execution on the ground that he was mentally incompetent, stressing that he could not recollect committing the crime for which he had been sentenced to die. Alabama responded that Madison had a rational understanding of the reasons for his execution, even assuming he had no memory of committing his crime. And more broadly, the State claimed that Madison failed to implicate *Ford* and *Panetti* because both decisions concerned themselves with gross delusions, which Madison did not have. Following a competency hearing, the trial court found Madison competent to be executed. On federal habeas review, this Court summarily reversed the Eleventh Circuit's grant of relief, holding that, under the 'demanding' and 'deferential standard' of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), '[n]either *Panetti* nor *Ford* 'clearly established' that a prisoner is incompetent to be executed' because of a simple failure to remember his crime. *Dunn v. Madison*, 583 U. S. ___, ___. But the Court 'express[ed] no view' on the question of Madison's competency outside of the AEDPA context. Id., at ___. When Alabama set a 2018 execution date, Madison returned to state court, arguing once more that his mental condition precluded the State from going forward. The state court again found Madison mentally competent.

"Held:

"1. Under *Ford* and *Panetti*, the Eighth Amendment may permit executing a prisoner even if he cannot remember committing his crime. *Panetti* asks only about a person's comprehension of the State's reasons for resorting to punishment, not his memory of the crime itself. And the one may exist without the other. Such memory loss, however, still may factor into the analysis *Panetti* demands. If that loss combines and interacts with other mental shortfalls to deprive a person of the capacity to comprehend why the State is exacting death as a punishment, then the *Panetti* standard will be satisfied. Pp. 9–11.

"2. Under *Ford* and *Panetti*, the Eighth Amendment may prohibit executing a prisoner even though he suffers from dementia or another disorder rather than psychotic delusions. The *Panetti* standard focuses on whether a mental disorder has had a particular effect; it has no interest in establishing any precise cause. *Panetti*'s references to 'gross delusions,' 551 U. S., at 960, are no more than a predictable byproduct of that case's facts. *Ford* and *Panetti* hinge on the prisoner's '[in]comprehension of why he has been

singled out' to die, 477 U. S., 409, and kick in if and when that failure of understanding is present, irrespective of whether one disease or another is to blame. In evaluating competency, a judge must therefore look beyond any given diagnosis to a downstream consequence. Pp. 12–14.

"3. Because this Court is uncertain whether the state court's decision was tainted by legal error, this case is remanded to that court for renewed consideration of Madison's competency. The state court's brief 2018 ruling—which states only that Madison 'did not prove a substantial threshold showing of insanity[ ]'—does not provide any assurance that the court knew a person with dementia, and not psychotic delusions, might receive a stay of execution. Nor does that court's initial 2016 opinion. The sole question on which Madison's competency depends is whether he can reach a rational understanding of why the State wants to execute him. In answering that question—on which this Court again expresses no view—the state court may not rely on any arguments or evidence tainted with the legal errors addressed by this Court. Pp. 14–18.

"Vacated and remanded.

"KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, and SOTOMAYOR, JJ., joined. ALITO, J., filed a dissenting opinion, in which THOMAS and GORSUCH, JJ., joined. KAVANAUGH, J., took no part in the consideration or decision of the case."