

Appellate Court Decisions - Week of 2/29/16

First Appellate District of Ohio

State v. Griffin, 2016-Ohio-782

Appellate Jurisdiction: Postconviction: Postrelease Control

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-150005_03022016.pdf

Summary from the First District:

“Appellant’s 2014 appeal from his 2005 judgment of conviction was subject to dismissal for lack of jurisdiction, because the appeal was not timely filed. App.R. 4(A)(1).

“R.C. 2953.21 et seq. did not confer upon the common pleas court jurisdiction to entertain defendant’s postconviction motion for resentencing based on the sentencing court’s failure to provide community-service-in-lieu-of-costs notification or adequate postrelease-control notification: the motion was reviewable under the postconviction statutes, but did not satisfy the statutes’ time restrictions or jurisdictional requirements for a late postconviction claim.

“Defendant’s postconviction challenge to the sentencing court’s failure to provide community-service-in-lieu-of-costs notification was not reviewable by the common pleas court under the jurisdiction to correct a void judgment, because the failure to provide that notification did not render his sentences void.

“The common pleas court had jurisdiction to review and correct defendant’s sentences, because the sentences were void to the extent that he had not been adequately notified concerning postrelease control.”

State v. Hall, 2016-Ohio-783

OVI: Arrest: Probable Cause

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-150317_03022016.pdf

Summary from the First District:

“The trial court erred in granting defendant’s motion to suppress evidence for lack of probable cause at the time of her arrest for OVI where the defendant was lawfully detained when she was placed in a police cruiser for safety reasons and denied the use of her phone during the OVI investigation, and where she was not

under arrest until after she became belligerent and combative and refused to take field-sobriety tests, because these facts, when considered in the totality of the other circumstances, including the officer’s observation of a strong odor of alcohol about her person, her admission to drinking alcohol earlier in the evening, her trouble with balance, and her involvement in a single-car accident, provided probable cause for the arrest.”

State v. Johnson, 2016-Ohio-781

Sentencing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-120250_02262016.pdf

Summary from the First District:

“A defendant may benefit from the decrease in the classification or degree of an offense enacted after the commission of the offense but before sentencing.

“Pursuant to the clear language of R.C. 2945.75, a verdict form signed by a jury must include either the degree of the offense of which the defendant is convicted or a statement that an aggravating element has been found to justify convicting a defendant of a greater degree of a criminal offense.

“In cases involving offenses, like theft-related offenses, for which the addition of an element or elements can elevate the offense to a more serious degree, the verdict form itself is the only relevant thing to consider in determining whether the trial court complied with R.C. 2945.75.”

State v. Martin, 2016-Ohio-802

Hearsay: Excited Utterance: Evidence: R.C. 2941.25: Sentencing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-150054_03042016.pdf

Summary from the First District:

“The trial court properly determined that defendant’s statements to police were made voluntarily where the record demonstrates that he was not intoxicated to such a degree that he could not understand the nature of what was occurring, and he was not denied water where he asked for water only once, was never told he could not have water until he gave a statement, and was given water when he asked a second time.

“The statement made by the nine-year-old victim about her sexual assault constituted an excited utterance even though it did not occur immediately after the

event, because she was still under the stress of the event and did not otherwise have time to fabricate a false statement.

“The trial court did not abuse its discretion in allowing the police officer to testify that a display of toys could be attractive to children, because such an observation did not constitute an expert opinion and any error was harmless.

“The trial court properly convicted defendant of rape and kidnapping where the evidence indicated that he ordered the child-victim from the street up to his apartment, kept her there for 30 minutes, and performed cunnilingus on her.

“Rape and kidnapping were not allied offenses of similar import requiring merger where defendant removed the child-victim from a public place and took her to a closed apartment where he held her for 30 minutes and performed cunnilingus on her.

“The trial court properly sentenced defendant to 25 years to life in prison for rape where it found that defendant had used force against the child-victim, and to 15 years to life for kidnapping where it found that defendant did not release her unharmed.

“The failure of the trial court to inform defendant that he was ineligible for earned days of credit was not reversible error.

“The trial court properly sentenced defendant to maximum, consecutive sentences where the court’s remarks at the sentencing hearing show that it considered the relevant sentencing provisions, and where it made the required findings to impose consecutive sentences and journalized those findings in its sentencing entry.”

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

Nothing new.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

In re Childress, 2016-Ohio-814

Relief From Disability

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-814.pdf>

Summary from the Eighth District: “The trial court erred in denying appellant's application for relief from weapons disability where appellant's 1987 fourth-degree felony conviction had been expunged, appellant had committed no legal infractions since 1987, secured several undergraduate degrees and certifications, and had been gainfully employed for a number of years. Appellant filed the application to complete his security officer certification training, qualifying him to transfer to a more lucrative position of employment with his current employer. There was no support for the denial in the record.”

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

Nothing new.

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.