

Appellate Court Decisions - Week of 3/12/18

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

First Appellate District of Ohio

State v. Wright, 2018-Ohio-877

Sentencing: Allied Offenses

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-877.pdf>

Summary from the First District:

“In sentencing defendant on eight counts of theft, the trial court erred in not merging two of the counts as allied offenses of similar import where defendant broke into a vehicle and stole two credit cards belonging to the same victim; but the court did not err in imposing consecutive sentences on the other six counts, as the trial court’s findings were made in accordance with R.C. 2929.14(C)(4) and supported by the record.”

In re: \$18,823.06, 2018-Ohio-876

Forfeiture

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-876.pdf>

Summary from the First District:

“In a civil forfeiture proceeding, the state presented sufficient evidence for the trial court to order the forfeiture of funds in a checking account as proceeds properly seized by the state where the owner received cash from an individual engaged in a drug enterprise for renting vehicles used in drug trafficking; however, there was not sufficient evidence for the trial court to order the forfeiture of three other bank accounts where the state did not demonstrate that the funds in those accounts were tied to proceeds from drug trafficking. [*But see* DISSENT: The trial court erred in ordering the forfeiture of the funds in the checking account, because the state did not prove that they were connected to illegal activity.]”

State v. Stowers, 2018-Ohio-926

Appellate Review: Civ.R. 58(B): Sex Offenses

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-926.pdf>

Summary from the First District:

“Where defendant had been convicted in 1978 of attempted rape and adjudicated as a sexual predator in 1997; where, in 2006, defendant filed a motion pursuant to *State v. Champion*, 106 Ohio St.3d 120, 2005-Ohio-4098, 832 N.E.2d 718, to set aside the order requiring him to register as a sexual predator under former R.C. Chapter 2950 (‘Megan’s Law’), and the trial court overruled the motion, but never ordered the clerk to serve defendant with a copy of the order overruling the motion; and where, in 2016, defendant filed a motion requesting that the trial court comply with Civ.R. 58(B) and serve him with the 2006 order overruling the motion, the trial court granted the motion and ordered the clerk to serve defendant with the 2006 order, and defendant filed a notice of appeal from the 2006 order within 30 days of service, defendant’s 2016 appeal of the overruling of his 2006 motion was timely.

“The Ohio Supreme Court’s holding in *State v. Clayborn*, 125 Ohio St.3d 450, 2010-Ohio-2123, 928 N.E.2d 1093, that a direct appeal from a sex-offender-classification judgment ‘is an appeal in a criminal case that must be filed pursuant to App.R. 4(A) within 30 days after judgment is entered,’ does not apply where defendant is not appealing from the initial sex-offender-classification judgment; Civ.R. 58(B) service rules apply where defendant is appealing from a judgment overruling a motion filed after conviction to vacate his sex-offender classification.

“Where the record showed that defendant had completed his sentence for attempted rape well before July 1, 1997, Megan’s Law’s effective date, but was serving time on that date for two thefts, he has no duty to register as a sex offender.”

State v. Smith: 2018-Ohio-927**Unauthorized Use of a Motor Vehicle: Sufficiency****Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-927.pdf>

Summary from the First District:

“In a prosecution for unauthorized use of a motor vehicle in violation of R.C. 2913.03(A), where the record indicated that the defendant had retained possession of and control over the victim’s vehicle, but had not used or operated the vehicle, the conviction was not supported by sufficient evidence.”

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. Gilbert, 2018-Ohio-879

Sentencing: Sex Offender Registration

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2018/2018-Ohio-879.pdf>

Summary from the Sixth District:

“The trial court erred in failing to advise the defendant of the residency restrictions set forth in R.C. 2950.034 before accepting his guilty plea to a sexually oriented offense. The trial court's failure to advise the defendant of the penalty renders his plea invalid and must be vacated without an analysis of the totality of the circumstances or prejudicial effect. This decision is in conflict with other appellate districts and the issue is certified to the Supreme Court.”

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

Brook Park v. Wright, 2018-Ohio-953

Speedy Trial

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-953.pdf>

Summary from the Eighth District:

“The trial court violated appellant's speedy trial rights, according to R.C. 2945.71(B)(2) when it waited more than 18 months to bring appellant to trial.”

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

Here's an interesting one:

United States v. Bergrin, No. 16-4240

Appeals: Jurisdiction

Full Decision:

<http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0053p-06.pdf>

“The government charged Ronald Bergrin with threatening a federal officer. The district court dismissed the charges against Bergrin after finding him incompetent to stand trial. Bergrin appealed, prompting this case-or-controversy question: Does a criminal defendant have standing to appeal the dismissal of charges against him? There is reason to wonder. An

appellate victory would not help him in one sense, as it would allow the criminal case against him to proceed. And an appellate loss would not help him in another sense, as it would add sting to the incompetence finding. Even so, the defendant may appeal. Although Bergrin prevailed in one way (the court dismissed the charges), he did not prevail in another way (the court found him incompetent to stand trial), and that last reality suffices to permit the appeal. We have jurisdiction and affirm.”

Supreme Court of the United States

Nothing to report.