

## Appellate Court Decisions - Week of 3/14/16

### First Appellate District of Ohio

*Nothing new.*

### Second Appellate District of Ohio

*Nothing new.*

### Third Appellate District of Ohio

#### **State v. Gaspareno, 2016-Ohio-990**

Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2016/2016-Ohio-990.pdf>

The trial court erred in sentencing appellant to a 12-month prison term based on hearsay statements contained in his co-defendants' pre-sentence investigations. The error was not harmless, as without those statements, there was nothing in the record to support the trial court's finding that resulted in a prison sentence rather than community control.

### Fourth Appellate District of Ohio

*Nothing new.*

### Fifth Appellate District of Ohio

#### **State v. Bigelow, 2016-Ohio-1073**

OVI: Felony: R.C. 2941.1413

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2016/2016-Ohio-1073.pdf>

The trial court did not err in granting appellee's motion to dismiss his OVI indictment as a felony without prejudice because, although he signed a waiver of counsel on one of his previous OVI convictions, he never appeared in open court that day nor was the plea and waiver placed on the record.

## Sixth Appellate District of Ohio

*Nothing new.*

## Seventh Appellate District of Ohio

**State v. McCabe-Heathcote, 2016-Ohio-1010**

Sentencing: R.C. 2929.12

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2016/2016-Ohio-1010.pdf>

**The trial court erring in sentencing appellant because it presumed a prison term was favored for a fourth-degree felony conviction when it is not.**

## Eighth Appellate District of Ohio

*Nothing new.*

## Ninth Appellate District of Ohio

*Nothing new.*

## Tenth Appellate District of Ohio

**State v. Jones, 2016-Ohio-951**

Plea Withdrawal

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2016/2016-Ohio-951.pdf>

**The trial court abused its discretion when it denied appellant's pre-sentence motion to withdraw his guilty plea. Appellant was facing a trial on multiple felony charges along with four co-defendants. The plan leading up to trial was that they would all go to trial together and none of them would testify. It was also the plan that the attorney for one of the co-defendants would be the one to conduct voir dire, so appellant's attorney was not prepared to conduct voir dire.**

On the morning of trial, the state informed defense counsel that two of the co-defendants accepted plea agreements and one of them would testify for the state. Appellant's counsel informed the court that he did not feel prepared to try the case anymore because he had not prepared for a trial with one of the co-defendants as a state's witness, and he was not prepared to conduct voir dire.

Ultimately, the 10th District said the following: "In summation, we conclude six of the nine factors in the balancing test weigh in favor of appellant. Although no one factor is conclusive, we place great weight on trial counsel's statements to the court that he was not prepared for trial due to the last-minute plea agreement of a codefendant, her resulting agreement to appear as the state's witness, and the voir dire issues accompanying the last-minute plea, and we emphasize how those statements may have affected appellant's decision to accept the plea in the first place."

### Eleventh Appellate District of Ohio

*Nothing new.*

### Twelfth Appellate District of Ohio

#### **State v. Conn, 2016-Ohio-1001**

Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2016/2016-Ohio-1001.pdf>

The trial court erred in conducting a de novo resentencing hearing on remand where the case was only remanded after appeal for a determination whether consecutive sentences were appropriate under R.C. 2929.14(C)(4).

#### **Middletown v. Reuss, 2016-Ohio-996**

Attempted Voyeurism: Sufficiency

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2016/2016-Ohio-996.pdf>

Appellant was charged with voyeurism in violation of Middletown Codified Ordinance Section 666.05(d), which mirrors R.C. 2907.08(D). He was found guilty of attempted voyeurism. The conviction was based on

insufficient evidence, however, because the plain language of the statute requires that the perpetrator record or photograph the victim under or through the victim's clothing. The victim in this case was not wearing clothes at the time of the incident, so there was no clothing to record through. Appellant was charged under the wrong subsection of the statute.

## Supreme Court of Ohio

### ***State v. Marcum*, 2016-Ohio-1002**

Appeal: Standard of Review: Felony Sentencing: R.C. 2953.08(G)(2): *Kalish*

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-1002.pdf>

“Applying the plain language of R.C. 2943.08(G)(2), we hold that an appellate court may vacate or modify a felony sentence on appeal only if it determines by clear and convincing evidence that the record does not support the trial court's findings under relevant statutes or that the sentence is otherwise contrary to law. In other words, an appellate court need not apply the test set out by the plurality in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124.”

### ***In re D.S.*, 2016-Ohio-1027**

Juvenile: Sex-Offender Registrant: R.C. 2152.83(B)

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-1027.pdf>

“When a delinquent child disputes that he or she was at least 14 years old at the time the offenses were committed and age cannot be established from the undisputed allegations in the complaint, the juvenile court must make a determination of age eligibility before or during the sex-offender classification hearing and prior to subjecting the child offender to registration and notification requirements under R.C. 2152.82 through 2152.86 and Chapter 2950.”

“Conducting a sex-offender-classification hearing under R.C. 2152.83 upon a delinquent child's release from a secure facility does not violate the prohibition against double jeopardy.”

“The imposition of juvenile-offender-registrant status under R.C. 2152.82 or 2152.83(B) with corresponding registration and notification

requirements that continue beyond the offender's reaching age 18 or 21 does not violate the offender's due-process rights.”

***State v. Broom, 2016-Ohio-1028***

**Death Penalty: Cruel and Unusual Punishment: Double Jeopardy**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-1028.pdf>

**The State is not barred by the Cruel and Unusual Punishments and Double Jeopardy Clauses of the United States and Ohio Constitutions from executing a person on death row after a previous attempt to execute that person was unsuccessful. In this case, in the previous attempt to execute the prisoner, attempts to insert an IV catheter were unsuccessful. None of the drugs ever entered his body.**

**Sixth Circuit Court of Appeals**

*Nothing new.*

**Supreme Court of the United States**

*Nothing new.*