

Appellate Court Decisions - Week of 3/19/18

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

First Appellate District of Ohio

State v. Williams, 2018-Ohio-1040

Sex Offender Registry: Failure to Verify: R.C. 2950.06

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-1040.pdf>

Summary from the First District:

“Where the sheriff mailed the seven-day warning letter required by R.C. 2950.06(G) a day late resulting in defendant having only six days to verify his address, and not the required seven, the sheriff failed to strictly comply with the statute and defendant cannot be prosecuted for failure to verify a current address.”

State v. Murphy, 2018-Ohio-1063

Right to Counsel: Waiver

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-1063.pdf>

Summary from the First District:

“Defendant’s waiver of trial counsel was valid: the trial court’s inquiry to determine whether defendant fully understood and intelligently relinquished his constitutional right to counsel with respect to a prosecution for canoeing without a life jacket aboard the vessel was sufficient where defendant had told the court of his experience in the court system, expressed his appreciation of the charges and told the court of his defense, and he further acknowledged that he was facing a jail term, knew the role of counsel, and had some appreciation of the hazards inherent in self-representation.”

City of Blue Ash v. Price, 2018-Ohio-1062

Appellate Review: Constitutional Law

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-1062.pdf>

Summary from the First District:

“Where the trial court found defendant not guilty of a violation of a traffic ordinance after a criminal trial, the court of appeals has discretionary authority under R.C. 2945.67(A) and App.R. 5(C) to review substantive legal rulings made in the criminal case, so long as the verdict itself is not appealed.

“The trial court erred in determining that a municipal ordinance prohibiting toy vehicles in streets violated defendant’s constitutional right to travel: although a citizen has a fundamental right to intrastate travel, an ordinance which burdens a single mode of transportation, here toy vehicles, does not implicate the right to travel.

“The trial court erred in determining that a municipal ordinance prohibiting toy vehicles in streets was void for vagueness as applied to defendant’s conduct in riding a motorized skateboard: although the toy-vehicle ordinance does not specifically mention motorized skateboards among the prohibited modes of transportation on streets, nothing in the ordinance suggests that the prohibition is limited to human-powered modes of transportation, and because the ordinance prohibits riding a ‘skateboard’ in the street, a motorized skateboard could be considered a ‘skateboard’ or a ‘similar device.’”

State v. Martin, 2018-Ohio-1061

Witness Identification: Live Show-Up: Attempted Murder: Tampering With Evidence: Ineffective Assistance: Prosecutorial Misconduct: Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-1061.pdf>

Summary from the First District:

“Three witnesses’ identifications of defendant during one-person arrest-scene show-ups were reliable under the totality of the circumstances where they had a good opportunity to view defendant during the commission of the crimes, they provided consistent and thorough descriptions of him to the police and to the 911 operator, they were certain of their identifications at the time, and they identified the defendant within 30 minutes after the crimes.

“R.C. 2933.83 is limited to live lineups.

“Defendant’s convictions for attempted murder and tampering with the evidence were supported by sufficient evidence and were not contrary to the manifest weight of the evidence where the state presented testimony from three eyewitnesses who had seen defendant attack an unarmed man with a butcher knife cutting him on the head, face, and torso; one of those eyewitnesses followed defendant, alerting police to his whereabouts, and watched as the police took him into custody; and the police

immediately recovered the knife used in the attack hidden underneath a vehicle near where defendant had been taken into custody.

“The trial court did not abuse its discretion in denying defendant’s motion for a mistrial based on prosecutorial misconduct during closing argument, because the prosecutor merely responded to defense counsel’s arguments and did not improperly shift the burden of proof to defendant.

“Defendant’s claims that his two trial attorneys had rendered ineffective assistance by failing to adequately prepare for trial and failing to seek a continuance to determine whether he wanted to testify were not supported by the record where defendant had indicated his confidence in his attorneys’ representation, and the record shows that defendant’s failure to testify was the result of his own knowing and intelligent decision.

“The trial court’s imposition of consecutive sentences was not contrary to law where the trial court orally stated at the sentencing hearing and journalized in the sentencing entry the findings required by R.C. 2929.14(C)(4), and the record supported those findings.”

State v. Carberry, 2018-Ohio-1060

Juvenile: Bindover: Procedure: Sex Offenses: Constitutional Law: Ineffective Assistance: Jail-Time Credit

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-1060.pdf>

Summary from the First District:

“The juvenile court did not abuse its discretion in transferring defendant’s three gross-sexual-imposition cases to the common pleas court, and trial counsel was not ineffective in that regard, where the juvenile court ordered a mental evaluation pursuant to Juv.R. 30, held a hearing, discussed on the record the factors weighing in favor of transferring jurisdiction, and recorded the factors on a worksheet attached to the entry transferring jurisdiction: the juvenile court complied with all the requirements for discretionary transfer, and the court’s amenability determination was supported by the record and evinced a sound reasoning process.

“The common pleas court did not violate defendant’s constitutional right to due process or right to be free from cruel and unusual punishment by classifying him as a Tier II sex offender under R.C. Chapter 2950 after defendant had pleaded guilty to gross sexual imposition, and trial counsel was not ineffective in that regard: once defendant had been properly bound over to the adult court, his classification under the adult sex-offender-classification scheme did not violate his constitutional rights.

“The cause must be remanded, when the trial court did not, as required by R.C. 2967.19(B)(1)(g)(i) and 2967.191, determine and include in the sentencing entry the proper amount of jail-time credit to which defendant is entitled.”

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. Mick, 2018-Ohio-999

Ineffective Assistance

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2018/2018-Ohio-999.pdf>

Summary from the Sixth District:

“The defendant, who was convicted of multiple sexual offenses against children and sentenced to life in prison, was denied effective assistance of trial counsel where his counsel refused to participate in any phase of the trial.”

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Hakim, 2018-Ohio-969

Search

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-969.pdf>

Summary from the Eighth District:

“The trial court’s judgment granting defendant’s motion to suppress was affirmed. The plain view doctrine did not apply to a common, orange translucent pill bottle because the incriminating nature of the contents in the pill bottle was not immediately apparent to the officer without the officer first manipulating the bottle. The plain smell doctrine did not apply to a ‘balled up’ paper towel because the trial court implicitly found that the officer’s testimony that he smelled marijuana lacked credibility; the officer failed to include the fact that he smelled marijuana in his written report and did not mention it on direct examination.”

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

State v. Wade, 2018-Ohio-976

Sentencing: Aggravated Murder

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2018/2018-Ohio-976.pdf>

Appellant was convicted “of multiple counts of aggravated murder, murder, attempted murder, aggravated burglary, aggravated robbery, kidnapping, and associated firearm and criminal-gang specification.” At sentencing, the trial court failed to explicitly consider Appellant’s youth and attendant circumstances as a mitigating factor, required by R.C. 2929.03(A).

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

Ayestas v. Davis, Slip Opinion No. 16-6795

Federal Habeas

Full Decision:

https://www.supremecourt.gov/opinions/17pdf/16-6795_c9dh.pdf

Syllabus:

Petitioner Ayestas was convicted of murder and sentenced to death in a Texas state court. He secured new counsel, but his conviction and sentence were affirmed on appeal. A third legal team sought, unsuccessfully, state habeas relief, claiming trial-level ineffective assistance of counsel but not counsel’s failure to investigate petitioner’s mental health and alcohol and drug abuse during the trial’s penalty phase. His fourth set of attorneys did raise that failure in a federal habeas petition, but because the claim had never been raised in state court, the District Court held, it was barred by procedural default. That decision was vacated and remanded for reconsideration in light of *Martinez v. Ryan*, 566 U. S. 1—where this Court held that an Arizona prisoner seeking federal habeas relief could overcome the procedural default of a trial-level ineffective-assistance-of-counsel claim by showing that the claim is substantial and that state habeas counsel was also ineffective in failing to raise the claim in a state habeas proceeding—and *Trevino v. Thaler*, 569 U. S. 413—which extended that holding to Texas prisoners. Petitioner filed an ex parte motion asking the District Court for funding to develop his claim that both his trial and state habeas counsel were ineffective, relying on 18 U. S. C. §3599(f), which provides, in relevant part, that a district court “may authorize” funding for “investigative, expert, or other services . . . reasonably necessary for the representation of the defendant.” The court found his claim precluded by procedural default and thus denied his funding request. The Fifth Circuit also rejected the funding claim under its precedent: that a §3599(f) funding applicant must show that he has a “substantial need” for investigative or other services, and that funding may be denied when an applicant fails to present “a viable constitutional claim that is not procedurally barred.” 817 F. 3d 888, 895–896.

Held:

1. The District Court’s denial of petitioner’s funding request was a judicial decision

subject to appellate review under the standard jurisdictional provisions. Pp. 7–14.

(a) Title 28 U. S. C. §§1291, 2253, and 1254 confer jurisdiction to review decisions made by a district court in a judicial capacity. “Administrative” decisions—about, e.g., facilities, personnel, equipment, supplies, and rules of procedure—are “not subject to [this Court’s] review,” *Hohn v. United States*, 524 U. S. 236, 245, but the District Court’s ruling here does not remotely resemble such decisions. Petitioner’s request was made by motion in his federal habeas proceeding, which is indisputably a judicial proceeding. And resolution of the funding question requires the application of a legal standard—whether the funding is “reasonably necessary” for effective representation—that demands an evaluation of petitioner’s prospects of obtaining habeas relief. Pp. 8–10.

(b) Respondent’s arguments in support of her claim that §3599’s funding requests are nonadversarial and administrative are unpersuasive. First, that the requests can be decided *ex parte* does not make the proceeding nonadversarial. The habeas proceeding here was clearly adversarial. And petitioner and respondent plainly have adverse interests on the funding question and have therefore squared off as adversaries. The mere fact that a §3599 funding request may sometimes be made *ex parte* is thus hardly dispositive. Second, nothing in §3599 even hints that the funding decisions may be revised by the Director of the Administrative Office of the Courts. Lower court cases that appear to have accepted Administrative Office review of certain Criminal Justice Act (CJA) payments, even if a proper interpretation of the CJA, are inapposite. Finally, the fact that §3599(g)(2) requires funding in excess of the generally applicable statutory cap to be approved by the circuit’s chief judge or another designated circuit judge, instead of by a panel of three, does not make the proceeding administrative. If Congress wishes to make certain rulings reviewable by a single circuit judge, the Constitution does not stand in the way. Pp. 10–14.

2. The Fifth Circuit did not apply the correct legal standard in affirming the denial of petitioner’s funding request. Section 3599 authorizes funding for the “reasonably necessary” services of experts, investigators, and the like. But the Fifth Circuit’s requirement that applicants show a “substantial need” for the services is arguably a more demanding standard. Section 3599 appears to use the term “necessary” to mean something less than essential. Because it makes little sense to refer to something as being “reasonably essential,” the Court concludes that the statutory phrase calls for the district court to determine, in its discretion, whether a reasonable attorney would regard the services as sufficiently important, guided by considerations detailed in the opinion. The term “substantial” in the Fifth Circuit’s test, however, suggests a heavier burden. And that court exacerbated the difference by also requiring a funding applicant to present “a viable constitutional claim that is not procedurally barred.” That rule that is too restrictive after *Trevino*, see 569 U. S. at 429, because, in cases where funding stands a credible chance of enabling a habeas petitioner to overcome the procedural default obstacle, it may be error for a district court to refuse funding. That being said, district courts were given broad discretion in assessing funding requests when Congress changed the phrase “shall authorize” in §3599’s predecessor statute, see 21 U. S. C. §848(q)(9), to “may authorize” in §3599(f). A funding applicant must not be expected to prove that he will be able to win relief if given the services, but the “reasonably

necessary” test does require an assessment of the likely utility of the services requested.

Respondent’s alternative ground for affirmance—that funding is never “reasonably necessary” where a habeas petitioner seeks to present a procedurally defaulted ineffective-assistance-of-trial-counsel claim that depends on facts outside the state-court record—remains open for the Fifth Circuit to consider on remand. Pp. 14–19.

817 F. 3d 888, vacated and remanded.

ALITO, J., delivered the opinion for a unanimous Court. SOTOMAYOR, J., filed a concurring opinion, in which GINSBURG, J., joined.