

Appellate Court Decisions - Week of 4/13/15

First Appellate District of Ohio

State v. Mack, 2015-Ohio-1430

Sentencing: Crim.R. 11: Ineffective Assistance

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140054_04152015.pdf

Summary from the First District:

“Defendant’s four-year sentence for trafficking in cocaine was contrary to law, where it was comprised of a two-year sentence for the trafficking offense and a two-year sentence for the defendant’s violation of his community control in a separate case. Ohio’s sentencing scheme does not permit a trial court to consider multiple offenses as a group and provide one omnibus sentence, but rather requires the trial court to consider each offense individually and to impose a separate sentence for each offense. (*State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824, followed.)

“Pursuant to R.C. 2953.08(G)(2), defendant’s four-year sentence for trafficking in cocaine, which was actually comprised of a two-year term for the trafficking offense and a two-year term for a community-control violation in a separate case, must be modified to a two-year sentence for the trafficking offense, where the record demonstrates that the trial court had exercised its sentencing discretion and stated its intent to impose a two-year prison term for the trafficking offense, and the two-year sentence was within the permissible range of sentences for a second-degree felony. [*But see* DISSENT: The appropriate remedy is to vacate the sentence and remand for resentencing, because modifying the sentence eliminates the trial court’s sentencing discretion and simply substitutes the appellate court’s judgment for that of the trial court.]

“Defendant’s guilty plea to trafficking in cocaine was not involuntary under Crim.R. 11, where the trial court advised defendant that it could run his sentence on the trafficking offense concurrently to the sentence on the community-control violation in a separate case, but did not advise defendant that it had the option, under R.C. 2929.14(C)(4), to order the sentences to be served consecutively. The trial court had no duty to provide such an advisement, and defendant could not demonstrate prejudice because the guilty-plea form expressly stated that his plea on the trafficking offense may result in community-control revocation proceedings and that any new sentence could be imposed consecutively.

“Defendant’s counsel was not ineffective for failing to move to withdraw defendant’s guilty plea upon learning that defendant was being sentenced on the community-control violation, where the record demonstrates that defendant and the state had reached a plea agreement with a recommended two-year sentence for the

trafficking offense; the community-control violation had not been included as part of the plea agreement; the trial court had explained the maximum penalty for the trafficking offense; and the guilty-plea form and the court's plea colloquy had informed the defendant that he could be ordered to serve a separate sentence for the community-control violation, either concurrently or consecutively to the sentence for the trafficking offense."

State v. Ferguson, 2015-Ohio-1463

Sex Offenses: Crim.R. 32.1: Hearing

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140368_04172015.pdf

Summary from the First District:

"The trial court erred in overruling, without a hearing, defendant's postsentence Crim.R. 32.1 motion to withdraw his guilty plea to failing to register as a sex offender, where defendant's assertions, if taken as true, established that his conviction may have been invalid as a matter of law, because he had no duty to register as a sex offender."

State v. Campbell, 2015-Ohio-1464

Arrest: Pleas: Waiver

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140372_04172015.pdf

Summary from the First District:

"The trial court did not err when it denied the defendant's motion to suppress, because the defendant waived his argument that there was no evidence that he had committed a crime at the time of his arrest by failing to raise it below.

"The trial court appropriately found that there was probable cause to arrest the defendant under the totality of the circumstances, where police officers independently corroborated information given by witnesses known to be unreliable.

"The defendant's no-contest plea precludes review of whether there was sufficient evidence of tampering, where the allegations in the indictment sufficiently stated the tampering offense."

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

State v. Pruett, 2015-Ohio-1377

Ineffective Assistance

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-1377.pdf>

Trial counsel was ineffective for failing to object to the testimony of two different police officers vouching for the credibility of the alleged theft victim without any evidence to corroborate the alleged victim's claims.

Ninth Appellate District of Ohio

State v. Chojnowski, 2015-Ohio-1405

Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2015/2015-Ohio-1405.pdf>

The trial court erred in denying Appellant’s motion to suppress the drug paraphernalia found in her bag, which she left in a car in which she was a passenger. The arresting officer investigated a car with two people inside for suspicion of prostitution. He admitted he had no probable cause to search, but the driver agreed to a search when asked by the officer. Appellant got out of the car as well and left behind a black bag. The bag was open, and inside another black bag could be seen. The officer pulled the interior bag out and asked Appellant what it was, to which she responded “illegal stuff.” However, because there was no exception to the Fourth Amendment to search the bag – for instance, the contents of the bag could not be seen in plain view – the motion to suppress should have been granted.

Tenth Appellate District of Ohio

Nothing new.

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

State v. Volk, 2015-Ohio-1415

Anders: Post-Release Control

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2015/2015-Ohio-1415.pdf>

A new twist has emerged in the post-release control notification issue. Here, the appellate counsel filed an *Anders* (no-error) brief. The 12th District proceeded to grant his/her motion to withdraw based on *Anders* and there being no prejudicial errors, but *sua sponte* remanded the case for resentencing so the Appellant could be properly notified of his post-release control obligations. So, the lesson here is: If you have an appeal for which you intend to file an *Anders* brief, and you notice your client was not properly notified of his/her post-release control obligations at sentencing, it may make more sense to discuss dismissing your appeal with the client rather than file an *Anders* brief.

State v. Napier, 2015-Ohio-1413

Sentencing: Allied Offenses

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2015/2015-Ohio-1413.pdf>

“Napier was charged with separate offenses for producing, within a single hour of a single day, a single controlled substance at a single place, found in a single bag in a single room. Under these circumstances, the fact that the constraints or conveniences of Napier’s chosen method of manufacture dictate separate ‘one-pot labs’ does not render each one-pot a separate offense. We therefore conclude the trial court properly merged Napier’s offenses for sentencing.”

The state raised a cross-appeal here arguing Napier’s two counts of the illegal manufacture of methamphetamine should not have merged for sentencing because there were five separate pots each in a different stage of the production process all in the same place. The 12th District, as quoted above, rejected that argument.

Supreme Court of Ohio

Nothing.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.