Appellate Court Decisions - Week of 4/14/14

First Appellate District of Ohio

State v. Harris, 2014-Ohio-1589

Sex Offenses: Reporting: Megan's Law: Adam Walsh Act

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130395_04162014.pdf

Summary from the First District:

"Where the defendant was subject to the reporting requirements of Megan's Law, but was tried and convicted for failing to register under the Adam Walsh Act, his conviction need not be vacated because his conduct violated his duty to register under Megan's Law."

State v. Livingston, 2014-Ohio-1637

Sentencing: Days of Credit

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130160_04182014.pdf

Summary from the First District:

"The trial court lacked authority to limit the defendant's eligibility to earn days of credit for participation in approved prison programs under R.C. 2967.193 as part of its sentence: a trial court's authority to impose a criminal sentence is provided by statute, and because no statute grants the judiciary any role in determining an offender's eligibility for earned credit, that portion of the trial court's sentence was not authorized by law."

***State v. Dangerfield*, 2014-Ohio-1638**

Ineffective Assistance: Presentence Investigation Report

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130305_04182014.pdf

Summary from the First District:

"Where defense counsel declined on the record to request a presentence investigation report and where the defendant can do no more than speculate that a presentence investigation report would have contained favorable information, the defendant cannot show that he was prejudiced by trial counsel's failure to request the report."

***State v. McAfee*, 2014-Ohio-1639**

Community Control: Guilty Plea: Due Process: Sentencing: Postrelease Control

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130567_04182014.pdf

Summary from the First District:

"In the proceedings leading to his conviction for violating his community control, defendant was not denied due process, nor was his guilty plea to the violation unknowing, when the record showed that he was adequately apprised of the proposed grounds for the violation.

"In sentencing defendant for violating his community control, the trial court did not deny defendant his R.C. 2929.19(A)(1) right of allocution, when the court personally addressed defendant, afforded him the opportunity to elect between prison and drug treatment, and based on his response, sentenced him to prison.

"The prison sentence imposed upon defendant for violating his community control was contrary to law only to the extent that the trial court failed to satisfy the statutory requirements concerning postrelease control: the court was not required to make findings supporting the sentence, and the sentence was within the range of sentences permitted for the violation and did not exceed the prison term specified in defendant's previous community-control-violation conviction; **but the court failed to provide at sentencing the postrelease-control notification required by R.C. 2929.19(B)(3)(d)-(e) and 2967.28(C)." *NOTE: I KNOW I HARP ON THIS OFTEN, BUT THIS ARGUMENT NEEDS TO STOP. IF IT ISN'T MADE OR CORRECTED, OUR CLIENTS WON'T BE ON PRC WHEN THEY COMPLETE THEIR SENTENCES.***

***In Re: M.U., C.U., and J.D.*, 2014-Ohio-1640**

Dependency: Ineffective Assistance of Counsel

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-130809_04182014.pdf

Summary from the First District:

"Mother's counsel was not ineffective as a matter of law for failing to seek dismissal of the Hamilton County Department of Job and Family Services' petition for permanent custody of her children when the trial court failed to rule on the petition within the timeframe set by R.C. 2151.35(B)(1): since dismissal would have been without prejudice, there existed reasons not to request dismissal that may have been part of a sound trial strategy."

Second Appellate District of Ohio

***State v. May*, 2014-Ohio-1542**

Sentencing: OVI

Full Decision: http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2014/2014-ohio-1542.pdf

Summary from the Second District (because I won't pretend I fully understood the language of the sentencing holding):

"Trial court did not commit plain error by failing to sua sponte provide a limiting instruction regarding defendant's prior conviction, which was required to be proven as an element of defendant's OVI offense. Defense counsel did not render ineffective assistance by failing to request such an instruction. Defendant's conviction for harassment with a bodily substance (saliva) was not unconstitutional under the overbreadth doctrine.

"Trial court erred in instructing the jury to determine whether defendant was under the influence of alcohol, a drug of abuse, or a combination, when there was no evidence that defendant's use of Cymbalta® could or did impair defendant's judgment or reflexes; however, considering the overwhelming evidence that defendant was under the influence of alcohol, the trial court's error was harmless.

"The trial court erred in imposing a four-year sentence for defendant's violation of R.C. 4511.19(A)(1)(a). R.C. 4511.19(G)(1)(e)(i), allowing an aggregate five-year sentence for a third-degree felony OVI, conflicts with R.C. 2929.13(A) and R.C. 2929.14(B)(4), which allow a maximum aggregate sentence of 36 months. The recent

changes and less restrictive provisions in R.C. Chapter 2929 must prevail under R.C. 1.52. Following State v. Owen, 2013-Ohio-2824, 995 N.E.2d 911 (11th Dist.)."

Third Appellate District of Ohio

***State v. Loman*, 2014-Ohio-1570**

Ineffective Assistance

Full Decision: http://www.sconet.state.oh.us/rod/docs/pdf/3/2014/2014-ohio-1570.pdf

Appellant was denied the effective assistance counsel where he was sentenced to prison, rather than community control, for violating a condition of his bond pending sentencing. The bond condition he violated was a requirement that he contact his attorney at least once a week. That information was revealed at sentencing when his attorney called his receptionist as a witness, and she testified that Appellant had only contacted his attorney twice over the course of several weeks. The Third District seemed more upset with the judge for setting that bond condition and putting the attorney in the position he was in than it was with the attorney for acting adversely to his client's interests.

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

Nothing new.

Ninth Appellate District of Ohio

***State v. Hogue*, 2014-Ohio-1565**

OVI: Motion to Suppress

Full Decision: http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2014/2014-ohio-1565.pdf

The trial court did not err in granting Appellant's motion to suppress the results of her Intoxilyzer 8000 breath test where the results of that test were not sent to the central server and the hard copy of the results did not contain all the information that would have been sent to the server. Appellant was able to demonstrate prejudice from less than strict compliance with Ohio Administrative Code Rule 3701-53-01(A) where the hard copy did not contain the following information: "atmospheric pressure, intake pressure, subject volume, subject duration, [and] sample attempts."

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

TRIAL ATTORNEYS: READ THIS CASE! YOU CAN USE IT THE NEXT TIME A PROSECUTOR ARGUES YOUR MOTION TO SUPPRESS LACKS SUFFICIENT PARTICULARITY. IT IS A SHORT READ.

***State v. Codeluppi*, 2014-Ohio-1574**

Criminal Procedure: Motion to Suppress: Crim.R. 47

Full Decision: http://www.sconet.state.oh.us/rod/docs/pdf/0/2014/2014-ohio-1574.pdf

Syllabus of the Court: "A highly detailed pleading of the facts and law is not required to satisfy the notice requirements of *State v. Shindler*, 70 Ohio St.3d 54, 636 N.E.2d 319 (1994), and to trigger the right to a hearing on a motion to suppress."

Sixth Circuit Court of Appeals

APPELLATE ATTORNEYS, READ THIS: YOU MUST NOTIFY YOUR COMMON PLEAS CLIENTS OF THE 180-DAY POST-CONVICTION FILING DEADLINE!

***Gunner v. Welch*, No. 13-3396**

Ineffective Assistance of Appellate Counsel: Post-Conviction

Full Decision: http://www.ca6.uscourts.gov/opinions.pdf/14a0076p-06.pdf

Appellate counsel was ineffective where, although he was not required to file any post-conviction motions, he did not notify Appellant that he only had 180 days in Ohio to file for post-conviction relief.

Supreme Court of the United States

Nothing new.