Appellate Court Decisions - Week of 4/17/17

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

First Appellate District of Ohio

***State v. Ruff*, 2017-Ohio-1430**

Sentencing

Full Decision:
http://www.hamiltoncountyohio.gov/UserFiles/Servers/Server_3788196/File/releases/C-160385_04192017.pdf

Summary from the First District:

"On appeal from a remand for resentencing on allied offenses, defendant's arguments relating to the trial court's failure to make the findings for consecutive sentences, consider the purposes and principles of sentencing in R.C. 2929.11 and 2929.12, and notify him pursuant to R.C. 2929.19(B)(2)(f) that he cannot ingest or be injected with a drug of abuse and that he is required to submit to random drug testing in prison are not barred by res judicata, because they arose out of his resentencing hearing.

"The trial court did not err in imposing consecutive sentences where the trial court made the requisite findings under R.C. 2929.14(C)(4) at the sentencing hearing and incorporated those findings into the judgment entries of conviction.

"The trial court was not required to state on the record that it had considered the R.C. 2929.11 and 2929.12 factors prior to imposing sentence, and the appellate court can presume from a silent record that the trial court considered the factors prior to imposing sentence unless the defendant affirmatively shows that the court failed to do so.

"The court's failure to inform the defendant that he cannot ingest or be injected with a drug of abuse while in prison and that he would be required to submit to random drug testing while incarcerated did not prejudice the defendant, because R.C. 2929.19(B)(2)(f) conferred no substantive rights upon the defendant, and therefore, the trial court's failure to comply with the statutory provision was harmless error.

"The cause must be remanded to the trial court for correction of the clerical errors in the judgment entries to reflect that the defendant had been found guilty by a jury and not the trial court."

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

***Toledo v. Ferguson*, 2017-Ohio-1394**

OVI: Administrative License Suspension

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2017/2017-Ohio-1394.pdf

The trial court erred in refusing to vacate Appellant's Administrative License Suspension (ALS). The arresting officer failed to comply with R.C. 4511.192, by failing to send a sworn BMV report to the trial court in a timely manner. Appellant was arrested and cited on May 7, 2016. The report was not filed with the court until May 13, 2016. That was neither within the 48-hour window nor the earliest possible date. Appellant, therefore, did not have appropriate opportunity to review the sworn report and prepare written appeal for his initial appearance. Therefore, the Sixth District found that the BMV and arresting officer failed to sufficiently comply with the notice mandates.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

Nothing to report.

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

***State v. Rahab*, 2017-Ohio-1401**

Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2017/2017-Ohio-1401.pdf

"There is no presumption of vindictiveness when, after trial, a trial court sentences a defendant to a longer prison term than was offered by the state in plea negotiations."

"An appellate court may reverse such a sentence for vindictiveness only if, after review of the entire record, it finds clearly and convincingly that the sentence was based on actual vindictiveness." Actual vindictiveness was not found in this case.

Dissent: "The majority's conclusion that the trial court did not act vindictively in this case creates a nearly impenetrable barrier to proving actual vindictiveness. If the trial court's actions in this case do not amount to vindictiveness, then what behavior would satisfy that burden? The majority's decision, in my view, may have a chilling effect on the willingness of criminal defendants to exercise their constitutional rights to trial."

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

***Nelson v. Colorado*, 581 U.S. ____ (2017)**

Court Costs: Fees: Restitution

Full Decision: https://www.supremecourt.gov/opinions/16pdf/15-1256_5i36.pdf

Note: I have no idea how this applies to Ohio, but I know it hasn't been easy for me to get money back for clients who have had successful appeals. If anyone knows the Ohio implications, please write to me and let me know.

Syllabus:

Petitioner Shannon Nelson was convicted by a Colorado jury of two felonies and three misdemeanors arising from the alleged sexual and physical abuse of her four children. The trial court imposed a prison term of 20 years to life and ordered her to pay $8,192.50 in court costs, fees, and restitution. On appeal, Nelson's conviction was reversed for trial error, and on retrial, she was acquitted of all charges.

Petitioner Louis Alonzo Madden was convicted by a Colorado jury of attempting to patronize a prostituted child and attempted sexual assault. The trial court imposed an indeterminate prison sentence and ordered him to pay $4,413.00 in costs, fees, and restitution. After one of Madden's convictions was reversed on direct review and the other vacated on postconviction review, the State elected not to appeal or retry the case.

The Colorado Department of Corrections withheld $702.10 from Nelson's inmate account between her conviction and acquittal, and Madden paid the State $1,977.75 after his conviction. In both cases, the funds were allocated to costs, fees, and restitution. Once their convictions were invalidated, both petitioners moved for return of the funds. Nelson's trial court denied her motion outright, and Madden's postconviction court allowed a refund of costs and fees, but not restitution. The Colorado Court of Appeals concluded that both petitioners were entitled to seek refunds of all they had paid, but the Colorado Supreme Court reversed. It reasoned that Colorado's Compensation for Certain Exonerated Persons statute (Exoneration Act or Act), Colo. Rev. Stat. §§13–65–101, 13–65–102, 13–65–103, provided the exclusive authority for refunds and that, because neither Nelson nor Madden had filed a claim under that Act, the courts lacked authority to order refunds. The Colorado Supreme Court also held that there was no due process problem under the Act, which permits Colorado to retain conviction-related assessments unless and until the prevailing defendant institutes a discrete civil proceeding and proves her innocence by clear and convincing evidence.

Held: The Exoneration Act's scheme does not comport with the Fourteenth Amendment's guarantee of due process. Pp. 5–11.

(a) The procedural due process inspection required by *Mathews v. Eldridge*, 424 U. S. 319, governs these cases. *Medina v. California*, 505 U. S. 437, controls when state procedural rules that are part of the criminal process are at issue. These cases, in

contrast, concern the continuing deprivation of property after a conviction has been reversed or vacated, with no prospect of reprosecution. Pp. 5–6.

(b) The three considerations balanced under *Mathews*—the private interest affected; the risk of erroneous deprivation of that interest through the procedures used; and the governmental interest at stake—weigh decisively against Colorado's scheme. Pp. 6–10.

(1) Nelson and Madden have an obvious interest in regaining the money they paid to Colorado. The State may not retain these funds simply because Nelson's and Madden's convictions were in place when the funds were taken, for once those convictions were erased, the presumption of innocence was restored. See, e.g., *Johnson v. Mississippi*, 486 U. S. 578, 585. And Colorado may not presume a person, adjudged guilty of no crime, nonetheless guilty *enough* for monetary exactions. Pp. 6–8.

(2) Colorado's scheme creates an unacceptable risk of the erroneous deprivation of defendants' property. The Exoneration Act conditions refund on defendants' proof of innocence by clear and convincing evidence, but defendants in petitioners' position are presumed innocent. Moreover, the Act provides no remedy for assessments tied to invalid misdemeanor convictions. And when, as here, the recoupment amount sought is not large, the cost of mounting a claim under the Act and retaining counsel to pursue it would be prohibitive.

Colorado argues that an Act that provides sufficient process to compensate a defendant for the loss of her liberty must suffice to compensate a defendant for the lesser deprivation of money. But Nelson and Madden seek the return of their property, not compensation for its temporary deprivation. Just as restoration of liberty on reversal of a conviction is not compensation, neither is the return of money taken by the State on account of the conviction. Other procedures cited by Colorado—the need for probable cause to support criminal charges, the jury-trial right, and the State's burden to prove guilt beyond a reasonable doubt—do not address the risk faced by a defendant whose conviction has been overturned that she will not recover funds taken from her based solely on a conviction no longer valid. Pp. 8–10.

(3) Colorado has no interest in withholding from Nelson and Madden money to which the State currently has zero claim of right. The State has identified no equitable considerations favoring its position, nor indicated any way in which the Exoneration Act embodies such considerations. P. 10.

362 P. 3d 1070 (first judgment) and 364 P. 3d 866 (second judgment), reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed an opinion concurring in the judgment. THOMAS, J., filed a dissenting opinion. GORSUCH, J., took no part in the consideration or decision of the cases.