Appellate Court Decisions - Week of 4/19/21

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

First Appellate District of Ohio

***State v. Smith*, C-190558**

Postconviction DNA testing

Full Decision: (No web cite as of yet).

As trial court failed to explain why it was denying appellant's application for postconviction DNA testing, case is remanded so that trial court can comply with R.C. 2953.73(D) which states the court must explain the reasons for the acceptance or rejection.

Second Appellate District of Ohio

***State v. Leet*, 2021-Ohio-1334**

Forfeiture

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2021/2021-Ohio-1334.pdf

Trial court erred in denying appellant's motion for return of his firearm. The disorderly conduct charge filed against appellant did not contain a forfeiture specification pursuant to R.C. 2981.04 nor was a civil forfeiture action instituted under R.C. 2981.05. Appellant was also not under a mental health disability pursuant to R.C. 2923.13(A)(5), as he was admitted as an involuntary patient for purposes of observation only which is exempted from the disability statute.

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

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Goins*, 2021-Ohio-1299**

Sufficiency; burglary

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-1299.pdf

State failed to present sufficient evidence that a person was "likely to be present" to support conviction of second-degree felony burglary where the occupant was away on vacation for an extended period of time. However, there was sufficient evidence to support conviction for the lesser included offense of third-degree felony burglary. Case remanded for the trial court to modify conviction to third-degree felony burglary and resentence appellant accordingly.

***State v. Blakey*, 2021-Ohio-1304**

Plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-1304.pdf

Appellant's guilty plea was not knowingly, intelligently, and voluntarily made where the trial court failed to strictly comply with Crim.R. 11(C) by not properly advising appellant of his constitutional rights nor that he was waiving them by pleading guilty.

***State v. Cover*, 2021-Ohio-1303**

Sentence

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-1303.pdf

Trial court erred by designating sentences for failure to comply convictions as mandatory; although sentences for failure to comply "must be served consecutively to all other prison terms, that does not transform the sentences

into mandatory ones."

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

***State v. Derifield*, 2021-Ohio-1351**

Ineffective assistance of counsel

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2021/2021-Ohio-1351.pdf

Trial counsel provide ineffective assistance of counsel by failing to file an affidavit of indigency to waive the $23,000 mandatory fines under R.C. 2929.18(B)(1).

***State v. Shaibi*, 2021-Ohio-1352**

Suppression

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2021/2021-Ohio-1352.pdf

In state's appeal, trial court did not err in granting appellant's motion to suppress the search of a rental truck driven by appellant's cousin in which appellant was a passenger. The traffic stop, although initially justified by trooper's observation of driver committing two traffic violations, was unreasonably prolonged beyond the initial purpose of the stop by trooper requesting an EL Paso Intelligence Center ("EPIC") check of appellant and his cousin. Such EPIC check "was not an ordinary traffic stop inquiry as it was not related to the mission of the traffic stop. . . it is something that cannot be accessed immediately as it 'takes some time' to obtain the information from an outside agency and the information was not needed to issue the traffic citations." Further, in viewing the totality of the circumstances, the COA found

"there were not sufficient articulable facts giving rise to a suspicion of specific criminal activity. . . ."

***State v. Hodgkin*, 2021-Ohio-1353**

Reagan Tokes sentence

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2021/2021-Ohio-1353.pdf

Trial court erred by failing to advise appellant of the five mandatory notifications set forth in R.C. 2929.19(B)(2)(c) at his sentencing hearing; case remanded for the sole purpose of resentencing appellant in accordance with the statute.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

***Jones v. Mississippi*, 593 U.S. ____ (2021)**

Juvenile life-without-parole sentencing

Full Decision:
https://www.supremecourt.gov/opinions/20pdf/18-1259_8njq.pdf

***Held*: In the case of a defendant who committed a homicide when he or she was under 18, *Miller* and *Montgomery* do not require the sentencer to make a separate factual finding of permanent incorrigibility before sentencing the defendant to life without parole. In such a case, a discretionary sentencing system is both constitutionally necessary and constitutionally sufficient. Pp. 5–22.**

(1) A sentencer need not make a separate factual finding of permanent incorrigibility before sentencing a murderer under 18 to life without parole. In *Miller*, the Court mandated "only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing" a life-without-parole sentence. 567 U. S., at 483. And in *Montgomery*, the Court stated that "a finding of fact regarding a child's incorrigibility . . . is not required." 577 U. S., at 211. *Miller* and *Montgomery* require consideration of

an offender's youth but not any particular factual finding. *Miller* and *Montgomery* therefore refute Jones's argument that a finding of permanent incorrigibility is constitutionally necessary. Pp. 5–14.

(2) Nor must a sentencer provide an on-the-record sentencing explanation with an "implicit finding" of permanent incorrigibility before sentencing a murderer under 18 to life without parole. An on-the-record sentencing explanation is not necessary to ensure that a sentencer considers a defendant's youth. Nor is an on-the-record sentencing explanation required by or consistent with *Miller* or *Montgomery*, neither of which said anything about a sentencing explanation. Pp. 14–19.

(3) The Court's decision does not disturb *Miller*'s holding (that a State may not impose a mandatory life-without-parole sentence on a murderer under 18) or *Montgomery*'s holding (that *Miller* applies retroactively on collateral review). The resentencing in Jones's case complied with *Miller* and *Montgomery* because the sentencer had discretion to impose a sentence less than life without parole in light of Jones's youth. The Court's decision today should not be construed as agreement or disagreement with Jones's sentence. In addition, the Court's decision does not preclude the States from imposing additional sentencing limits in cases involving murderers under 18. Nor does the Court's decision prohibit Jones from presenting his moral and policy arguments against his life-without-parole sentence to the state officials who are authorized to act on those arguments. Pp. 19–22.

285 So. 3d 626, affirmed.

KAVANAUGH, J., delivered the opinion of the Court, in which ROBERTS, C. J., ALITO, GORSUCH, and BARRETT, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment. SOTOMAYOR, J., filed a dissenting opinion, in which BREYER and KAGAN, JJ., joined.

This is a terrible decision by SCOTUS which "guts *Miller* v. *Alabama*, 567 U. S. 460 (2012), and *Montgomery* v. *Louisiana*, 577 U. S. 190 (2016)." SOTTOMAYOR, dissenting. Sottomayor goes on to state that "[t]oday, however, the Court reduces *Miller* to a decision requiring "just a discretionary sentencing procedure where youth [is] considered." *Ante,* at 11. Such an abrupt break from precedent demands 'special justification.' *Ramos* v. *Louisiana*, 590 U. S. ____, ____ (2020) (KAVANAUGH, J., concurring in part) (slip op., at 6) (internal quotation marks omitted). The Court offers none. Instead, the Court attempts to circumvent *stare decisis* principles by claiming that '[t]he Court's decision today carefully follows both *Miller* and *Montgomery*.' *Ante,* at 19. The Court is fooling no one. Because I cannot countenance the Court's abandonment of *Miller* and *Montgomery*, I dissent."

Justice Sottomayor does not hold back in that the Court of today is abandoning precedent solely because of the makeup of the new members of the Court,

something that *stare decisis* is suppose to prevent.