

Appellate Court Decisions - Week of 4/24/17

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

First Appellate District of Ohio

State v. Dardinger, 2017-Ohio-1525

Appellate Review: Jurisdiction: Postconviction: Postrelease Control

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-1525.pdf>

Summary from the First District:

“The common pleas court had no jurisdiction to entertain defendant's postconviction ‘Motion to Vacate Postrelease Control’ on the grounds that he was not sentenced in conformity with the postrelease-control statutes and that imposing postrelease control denied him the protections of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution: the motion was not reviewable under R.C. 2953.21 et seq. as a postconviction petition, because the postrelease-control claim did not allege a constitutional violation, and the alleged double-jeopardy violation did not occur during the proceedings leading to his conviction; under Crim.R. 33 as a motion for a new trial, when his conviction had followed a guilty plea, not a trial, or under Crim.R. 32.1 as a motion to withdraw a guilty plea, when the motion did not seek withdrawal of the plea; under R.C. Chapter 2731 as a petition for a writ of mandamus, under R.C. Chapter 2721 as a declaratory judgment action, or under R.C. Chapter 2725 as a petition for a writ of habeas corpus, because the motion did not satisfy those statutes' procedural requirements; under Civ.R. 60(B), upon the authority of Crim.R. 57(B), because his conviction was reviewable under the procedures provided for a direct appeal; or under a court's jurisdiction to correct a void judgment, because the postrelease-control portion of his sentence was not void.

“The postrelease-control portion of defendant's sentence was not void, because postrelease control was properly included in his sentence: the postrelease-control notification provided by the trial court at the combined plea-and-sentencing hearing before accepting defendant's guilty plea satisfied the statutory requirement that defendant be notified concerning postrelease control at sentencing; postrelease control was properly incorporated into the judgment of conviction by the nunc pro tunc entry correcting the judgment of conviction to include postrelease control; and the double-jeopardy protection against multiple punishments was not implicated by the adult parole authority's imposition of the five-year mandatory period of postrelease control after defendant had completed his prison term and had mistakenly been told that he would not be on postrelease control, because he had no legitimate expectation in the

finality of his sentence when he knew, or should have known, that his sentence was legally incomplete.”

In re M.I., 2017-Ohio-1524

Juvenile: Sex Offenses: Equal Protection

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-1524.pdf>

Summary from the First District:

“The mandatory classification of 16- and 17-year-old sex offenders under R.C. 2152.83(A) and 2152.84(A)(2)(c) does not violate the Equal Protection Clauses of the United States and Ohio Constitutions, because the juvenile-sex-offender-classification system is rationally related to the legitimate governmental interest of protecting the public from sex offenders.”

State v. Wright, 2017-Ohio-1568

Batson: Evidence: Hearsay: Other Acts: Impeachment: Prosecutorial Misconduct: Ineffective Assistance: Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2017/2017-Ohio-1568.pdf>

Summary from the First District:

“The trial court did not err in overruling the defendant’s objection to the state’s use of a peremptory challenge to exclude an African-American juror where the trial court’s acceptance of the state’s race-neutral reason based on the cumulative effect of several factors was not clearly erroneous.

“The trial court did not err in finding that a witness was unavailable even though the state failed to submit sworn testimony about its efforts to locate the witness, because the defendant forfeited the issue where he did not object on the basis that sworn testimony was required and did not dispute what the prosecutor had said about the state’s attempts to locate the witness.

“The trial court did not err in finding that a witness was unavailable where the record showed that even though the witness had been present during the trial, he had left the courthouse, could not be located, and was “on the run,” actively trying to avoid testifying.

“The trial court did not err in allowing the state to read an unavailable witness’s testimony from a previous trial to the jury, because the testimony fell under the hearsay exception in Evid.R. 804(B)(1) where it came from an adversarial proceeding and the defendant had had an opportunity and motive at that proceeding to develop the testimony by direct, cross and redirect examination.

“The trial court did not err in allowing an unavailable witness’s statement to police to be read to the jury under the hearsay exception for recorded recollection in Evid.R. 803(5) where the witness had repeatedly testified in a prior trial that he did not remember the events in question, but he had acknowledged making the statement to the police when his knowledge was fresh and had denied lying to the police.

“The trial court erred in allowing hearsay statements by the murder victim into evidence under the exception in Evid.R. 803(1) for present sense impressions, because the record did not establish a context for the victim’s statements or the event or condition that prompted his statements.

“The trial court did not err in allowing a police detective to testify to hearsay statements made by two witnesses to the effect that the defendant had admitted to murdering the victim, because those statements were consistent with the witnesses’ testimony in a previous trial and were used to rebut the defendant’s claim that the witnesses lied to receive favorable treatment.

“The trial court did not err in admitting evidence of the defendant’s other bad acts where that testimony was necessary to show the relationship between the defendant, the victim and the various witnesses, and to show the defendant’s motive for killing the victim.

“The trial court erred in allowing the state to impeach its own witnesses because a neutral answer such as ‘I don’t remember’ does not constitute affirmative damage.

“The record did not demonstrate that any alleged misconduct by the prosecutor was so egregious as to affect the defendant’s substantial rights.

“The defendant failed to demonstrate that his counsel’s representation fell below an objective standard of reasonableness or that but for counsel’s errors, the results of the proceeding would have been otherwise; therefore, he failed to meet his burden to show ineffective assistance of counsel.

“The trial court’s failure to inform the defendant at sentencing about the requirement that he submit to DNA testing and the consequences of failing to do so under R.C. 2901.07(B) was harmless and did not prejudice the defendant.”

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

State v. Cook, 2017-Ohio-1503

Restitution

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2017/2017-Ohio-1503.pdf>

The trial court erred in including in its restitution order the costs associated with investigating her theft and determining the amount of the loss. Those expenditures were not the direct and proximate result of the commission of the theft offense; rather, they were consequential costs incurred subsequent to the theft.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Pettry, 2017-Ohio-1548

Statute of Limitations: Rape

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-1548.pdf>

Summary from the Eighth District: “Dismissal of the indictment against appellee was proper. The statute of limitations expired prior to amendment of the indictment; appellee’s identity was known prior to expiration of the

statute of limitations, and a DNA match was made prior to the expiration of the statute of limitations.”

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

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.