

## Appellate Court Decisions - Week of 4/4/16

### First Appellate District of Ohio

*Nothing new.*

### Second Appellate District of Ohio

#### **State v. Hicks, 2016-Ohio-1420**

Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2016/2016-Ohio-1420.pdf>

The trial court erred in imposing consecutive sentences on appellant's convictions for four counts of fourth-degree felony theft from a disabled adult and one count of third-degree felony theft from a disabled adult. Although the trial court made all the requisite findings pursuant to R.C. 2929.14(C)(4), the Second District held record does not support the imposition of consecutive sentences in this case. The Second District reversed and remanded for the imposition of concurrent terms. "In our view, by sentencing this fifty-two year-old, first-time, non-violent offender to nine years in prison, the trial court failed to reasonably consider the concept of rehabilitation, as well as recidivism."

### 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

#### **State v. Sanders, 2016-Ohio-1397**

Alford Plea: Crim.R. 11(C)

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2016/2016-Ohio-1397.pdf>

**Appellant's *Alford* (guilty) plea was not knowingly and voluntarily made because the trial court failed to inform him of the registration requirements of a Tier III sex offender.**

**Seventh Appellate District of Ohio**

*Nothing new.*

**Eighth Appellate District of Ohio**

***State v. Shivers, 2016-Ohio-1378***

**Plea Withdrawal**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-1378.pdf>

**Summary from the Eighth District: "Trial court abused its discretion in denying appellant's presentence motion to withdraw his plea where the state plainly violated Crim.R. 16(B) by failing to turn over video of police interviews of both appellant and another witness which contained favorable accounts of the alleged crimes. Without the ability to analyze the usefulness of the videos, appellant's ability to enter an intelligent plea was hampered."**

***State v. Young, 2016-Ohio-1379***

**Sex Offender Registration: Failure to Provide Notice of Change of Address**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-1379.pdf>

**Appellant's conviction for failure to register his change of address in violation of R.C. 2950.05(E)(1) was based on insufficient evidence because appellant actually did include the address in question as a "secondary address" on the registration form.**

**Ninth Appellate District of Ohio**

***State v. Tucker, 2016-Ohio-1354***

**Sentencing: Trial Tax**

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2016/2016-Ohio-1354.pdf>

The trial court erred by retaliating against appellant at sentencing for exercising his right to a trial by jury. “Although the trial court emphasized the gravity of [appellant’s] conduct during sentencing, the balance of his comments create[d] the inference that [appellant] received a harsher sentence, at least in part, because he chose to take his case to trial. The record does not ‘contain[] unequivocal evidence that the decision to proceed to trial was not considered.’ \* \* \* Indeed \* \* \* the record is silent on this point.” Therefore, the Ninth District vacated appellant’s sentence and remanded the matter for a new sentencing hearing.

Tenth Appellate District of Ohio

***State v. Rawson*, 2016-Ohio-1403**

Jury Instruction: Mistreatment of Companion Animals

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2016/2016-Ohio-1403.pdf>

Summary from the Tenth District: “Defendant’s convictions under R.C. 959.131(B) and (C) for mistreatment or neglect of a companion animal were supported by sufficient evidence, but jury instructions given for R.C. 959.131(B) charge did not comply with rule stated in *State v. Gardner*, 118 Ohio St.3d 420, 2008-Ohio-2787, because they instructed on all alternative means of committing the offense, and no evidence supported some of those reasons.”

Eleventh Appellate District of Ohio

*Nothing new.*

Twelfth Appellate District of Ohio

*Nothing new.*

Supreme Court of Ohio

*Nothing new.*

## Sixth Circuit Court of Appeals

*Nothing new.*

## Supreme Court of the United States

### **Nichols v. United States, No. 15-5238**

#### **SORNA: Sex-Offender Registration**

**Full Decision:** [http://www.supremecourt.gov/opinions/15pdf/15-5238\\_khlo.pdf](http://www.supremecourt.gov/opinions/15pdf/15-5238_khlo.pdf)

#### **Syllabus:**

The Sex Offender Registration and Notification Act (SORNA) makes it a federal crime for certain sex offenders to “knowingly fail[] to register or update a registration,” 18 U. S. C. §2250(a)(3), and requires that offenders who move to a different State “shall, not later than 3 business days after each change of name, residence, employment, or student status,” inform in person “at least 1 jurisdiction involved pursuant to [42 U. S. C. §16913(a)] . . . of all changes” to required information, §16913(c). A §16913(a) jurisdiction is “each jurisdiction where the offender resides, . . . is an employee, and . . . is a student.”

Petitioner Nichols, a registered sex offender who moved from Kansas to the Philippines without updating his registration, was arrested, escorted to the United States, and charged with violating SORNA. After conditionally pleading guilty, Nichols argued on appeal that SORNA did not require him to update his registration in Kansas. The Tenth Circuit affirmed his conviction, holding that though Nichols left Kansas, the State remained a “jurisdiction involved” for SORNA purposes.

*Held:* SORNA did not require Nichols to update his registration in Kansas once he departed the State. Pp. 4–8.

(a) SORNA’s plain text dictates this holding. Critical here is §16913(a)’s use of the present tense. Nichols once resided in Kansas, but after moving, he “resides” in the Philippines. It follows that once Nichols moved, he was no longer required to appear in Kansas because it was no longer a “jurisdiction involved.” Nor was he required to appear in the Philippines, which is not a SORNA “jurisdiction.” §16911(10). Section 16913(c)’s requirements point to the same conclusion: Nichols could not have appeared in person in Kansas “after” leaving the State. SORNA’s drafters could have required sex offenders to deregister in their departure jurisdiction before leaving the country had that been their intent. Pp. 4–6.

(b) The Government resists this straightforward reading. It argues that a jurisdiction where an offender registers remains “involved” even after the offender leaves, but that would require adding the extra clause “where the offender appears on a registry” to §16913(a). Also unconvincing is the claim that §16914(a)(3)’s requiring the offender to provide each address where he “will reside” shows that SORNA contemplates the possibility of an offender’s updating his registration before he actually moves. That provision merely lists the pieces of information to be updated; it says

nothing about an obligation to update in the first place. Finally, the Government’s argument that Nichols actually experienced two “changes” of residence—first, when he turned in his apartment keys in Kansas, and second, when he checked into his Manila hotel—is inconsistent with ordinary English usage. Pp. 6–7.

(c) Although “the most formidable argument concerning the statute’s purposes [cannot] overcome the clarity [found] in the statute’s text,” *Kloeckner v. Solis*, 568 U. S. \_\_\_\_, \_\_\_\_, n. 4, the Court is mindful of those purposes and notes that its interpretation is not likely to create deficiencies in SORNA’s scheme. Recent legislation by Congress, as well as existing state-law registration requirements, offers reassurance that sex offenders will not be able to escape punishment for leaving the United States without notifying their departure jurisdictions. Pp. 7–8.

775 F. 3d 1225, reversed.

ALITO, J., delivered the opinion for a unanimous Court.