

Appellate Court Decisions - Week of 5/1/17

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

First Appellate District of Ohio

Nothing to report.

Second Appellate District of Ohio

State v. Sibrian, 2017-Ohio-2613

Weight of evidence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2017/2017-Ohio-2613.pdf>

Convictions for rape and gross sexual imposition of a person under the age of 13 were against the weight of the evidence and are vacated where state failed to establish that the offenses were committed while victim was under the age of 13.

Third Appellate District of Ohio

State v. Brentlinger, II, 2017-Ohio-2588

Allied offenses

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2017/2017-Ohio-2588.pdf>

Trial court was correct in merging kidnapping and felonious assault, as the offenses were committed with the same animus, and the kidnapping was committed for the purpose of facilitating the felonious assault; however, the kidnapping and aggravated robbery offenses were not allied for purposes of sentencing, since the initial kidnapping had a separate animus and the intention to commit the robbery did not form until after the kidnapping.

Fourth Appellate District of Ohio

State v. Dingus, 2017-Ohio-2619

Arson offender registry

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2017/2017-Ohio-2619.pdf>

Portion of R.C. 2909.15(D)(2)(b) limiting trial court's discretion to reduce an offender's mandatory lifetime registration period only upon the request of the prosecutor and law enforcement unconstitutional as violating the separation of powers doctrine; offending language severed so that the remainder of the statute remains intact.

State v. Evans, 2017-Ohio-1577

Postrelease control

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2017/2017-Ohio-1577.pdf>

Because original sentencing entry does not include proper advisement of the length of postrelease control and the consequences for violating postrelease control, imposition of postrelease control was void; and as the appellant had finished his prison sentence, the trial court cannot correct the defect. Therefore, the trial court does not have the authority to impose a 20-month prison term for a violation of the void postrelease control.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

State v. Arrington, 2017-Ohio-2578

Speedy trial

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2017/2017-Ohio-2578.pdf>

Trial court did not err in granting motion to dismiss for speedy trial violation due to state's numerous discovery violations nor in refusing to toll time against defendant in granting defendant's motion for continuance of the trial date necessitated by these discovery violations.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Williams, 2017-Ohio-2662

Plea

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-2662.pdf>

In delayed appeal, trial court erred by failing to forewarn defendant of a potentially longer prison term than the agreed prison term or give him the opportunity to withdraw his guilty plea at sentencing when a longer prison term is imposed.

State v. V.S., Jr., 2017-Ohio-1565

Sealing of record

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-1565.pdf>

Trial court erred by denying an application to seal a record of conviction without holding a hearing, as a hearing is required if the offense is not an ineligible offense listed in R.C. 2953.36.

State v. Williams, 2017-Ohio-2650

Plea

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-2650.pdf>

Defendant's guilty plea was not entered knowingly, voluntarily, and intelligently because he was given erroneous advise by counsel as to when he could obtain judicial release.

Ninth Appellate District of Ohio

State v. Podojil, 2017-Ohio-2640

Theft

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2017/2017-Ohio-2640.pdf>

Conviction for felony theft under R.C. 2913.71(B) was error, as the plain language of R.C. 2913.71(B) applies only to blank checks, not checks made out to other employees.

State v. Hopson, 2017-Ohio-2637

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2017/2017-Ohio-2637.pdf>

Trial court erred by vacating all sentences for multiple convictions where defendant only challenged the sex offender failure-to-register conviction as void.

State v. Ware, 2017-Ohio-2643

Jury instructions/lesser-included offense

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2017/2017-Ohio-2643.pdf>

In conviction for felonious assault, trial court did not err in instructing jury that it could consider lesser-included offense of assault only if the state failed to prove beyond a reasonable doubt the felonious assault, as instructions did not constitute the prohibited “acquittal first” instruction that jury could not consider lesser-included offense until it had reached unanimous decision about the greater offense.

Tenth Appellate District of Ohio

State v. Toms, 2017-Ohio-1576

Allied offenses

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2017/2017-Ohio-1576.pdf>

Trial court erred by not merging arson and vandalism offenses as allied, where only possible conduct that could satisfy the charged offense of vandalism in the case was setting the fire; that conduct was the same conduct supporting the arson offense.

In re A.R., Jr., 2017-Ohio-1575

Res judicata/Bindover

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2017/2017-Ohio-1576.pdf>

Res judicata barred state from relitigating the bindover issue after trial court denied the state's first motion for bindover.

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.