

Appellate Court Decisions - Week of 5/11/15

First Appellate District of Ohio

State v. Keeling, 2015-Ohio-1774

Postconviction

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140393_05132015.pdf

Summary from the First District:

“The common pleas court properly dismissed the postconviction petition for lack of jurisdiction: R.C. 2953.21 et seq. did not confer jurisdiction to entertain the late and successive petition; and petitioner’s allied-offenses and double-jeopardy claims, even if demonstrated, would not have rendered his convictions void.

The common pleas court did not violate the Supremacy Clause of Article VI of the United States Constitution or deny the rights to due process and equal protection secured by the Fourteenth Amendment, when it refused to apply *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061, retroactively or to rule that petitioner’s *Johnson*-based allied-offenses claims were not barred under the doctrine of res judicata: the Ohio Supreme Court held in *State v. Ketterer*, 140 Ohio St.3d 400, 2014-Ohio-3973, 18 N.E.3d 1199, that res judicata applies, and that *Johnson* does not apply retroactively to convictions that have become final before *Johnson* was decided; and neither the common pleas court nor the court of appeals was free to decide otherwise, because an inferior court must follow the controlling authority of a higher court, leaving to the higher court the prerogative of overruling its own decision.

“R.C. 2953.23(A)(1)(a) does not violate the federal constitutional right to due process or the due-course-of-law or access-to-courts guarantees of Article I, Section 16, of the Ohio Constitution, to the extent that it affords jurisdiction to entertain a late or successive postconviction claim based on a new, retrospectively applicable federal or state right recognized by the United States Supreme Court, but not a claim that, like petitioner’s allied-offenses claim, is based on the new ruling by the Ohio Supreme Court in *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061.”

State v. Washington, 2015-Ohio-1815

Jurisdiction: Sentencing: Jail-Time Credit

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-140315_05152015.pdf

Summary from the First District:

“The common pleas court lacked jurisdiction to correct the amount of jail-time credit in the sentencing entry after defendant had appealed the court’s judgment, because the trial court’s granting defendant additional days of jail-time credit constituted an act inconsistent with the appeals court’s jurisdiction to review the original judgment.

“The common pleas court should have included 212 days of jail-time credit in the sentencing entry, where the record reflected that defendant had been arrested on October 30, 2013, and had been confined continuously until he had been sentenced on May 29, 2014.”

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

State v. Carozza, 2015-Ohio-1783

Double Jeopardy

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2015/2015-Ohio-1783.pdf>

The trial court in Ashland County erred in granting Appellee’s motion to dismiss on double jeopardy grounds. Appellee’s vehicle stopped after he hit a cement barrier and struck a home in Richland County. He then fled the scene, entered Ashland County, and continued to drive until his vehicle ended up in a ditch. He tested .258 on a breathalyzer.

He was charged in Ashland County with an OVI under R.C. 4511.19(A)(1)(h) and 4511.19(A)(1)(a), and one count of unsafe vehicle under 4513.02. In Richland County, he was charged with OVI under 4511.19(A)(1)(a), operating a vehicle without a valid license under 4510.12, failure to control under 4511.202, and hit skip under 4511.202. He pleaded guilty to hit skip and reckless operation charges in Richland County.

The Fifth District said the following:

“The offenses of OVI in Richland County and OVI in Ashland County are, under the facts of this case, of dissimilar significance and have separate and identifiable harm. Testimony was presented that [Appellee’s] vehicle had stopped after the accident in Richland County. This accident caused damage to Shoup’s property. [Appellee] then decides to flee the scene of this accident. His obvious purpose and goal now becomes to elude detection for OVI and to evade responsibility for the damage he caused to the Shoup property. [Appellee] enters Ashland County and continue to drive until his vehicle eventually ends up in a ditch.

“Thus, [Appellee’s] continued driving into Ashland County after leaving the scene of the accident in Richland County caused separate, identifiable harm, was committed separately and was committed with a separate motivation. Thus under *Ruff*, [Appellee’s] act of driving OVI in Richland County was separate and distinct from his act of driving while under the influence in Ashland County.”

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

Nothing new.

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

State v. Thomas, 2015-Ohio-1778

Motion to Suppress

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2015/2015-Ohio-1778.pdf>

The trial court did not err in granting Appellee's motion to suppress the warrantless search of the hotel room where he was arrested. "[O]n the date of appellee's arrest, two police officers 'were on bicycle patrol. They smelled marijuana. They followed it to a particular room at a hotel. The windows were open. They saw a bag on the bed which they believed to be cocaine. They knocked on the door. The defendant opened the door.' The officers 'saw it and entered the room and confiscated the evidence as well as arrested the defendant.'"

There is a lot of good analysis in this case of exigent circumstances, public places, hot pursuit, and the good-faith exception. It's worth reading, but there's too much to summarize here. I'd just end up rewriting the whole thing.

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

Nothing new.