Appellate Court Decisions - Week of 5/16/16

First Appellate District of Ohio

State v. Crawford, 2016-Ohio-3030

Jurisdiction

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-150632_05182016.pdf

Summary from the First District:

"The appeal from the common pleas court's entry overruling defendant's postconviction motion to preserve exculpatory evidence must be dismissed for lack of jurisdiction, because the entry was not reviewable under the jurisdiction conferred upon a court of appeals by R.C. 2953.02 or 2953.08 to review a judgment of conviction entered in a criminal case, by R.C. 2953.23(B) to review an order awarding or denying postconviction relief, or by R.C. 2505.03(A) to review, affirm, modify, or reverse a 'final order, judgment or decree.' *See* Article IV, Section 3(B)(2), Ohio Constitution."

State v. Dean, 2016-Ohio-

Criminal Rule 11

Full Decision: http://www.hamilton-co.org/appealscourt/docs/decisions/C-150478_05202016.pdf

Summary from the First District:

"By informing the defendant during the plea colloquy that he faced a maximum sentence of three years' imprisonment for a first-degree felony, which actually carried a sentencing range of three to 11 years' imprisonment, the trial court failed to substantially comply with Crim.R. 11(C)'s requirement that it inform the defendant of the maximum sentence faced.

"Where defendant received a sentence that was two years greater that what he had been informed was the maximum he faced, he was prejudiced by the trial court's misstatement of the maximum penalty and did not enter his guilty pleas knowingly, intelligently, or voluntarily."

Second Appellate District of Ohio

State v. Bailey, 2016-Ohio-2957

Sentencing: R.C. 2929.19(D)

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2016/2016-Ohio-2957.pdf

The trial court erred in disapproving Appellant's placement into an intensive program prison without giving its reasons for the disapproval as required by R.C. 2929.19(D). The trial court also erred in prematurely disapproving Appellant's transfer to transitional control at sentencing.

Third Appellate District of Ohio

***State v. Nolan*, 2016-Ohio-2985**

Restitution: Failure to Confine Dog

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2016/2016-Ohio-2985.pdf

In a conviction for failure to confine a dog where Appellant's dog attacked the victim's dog, the trial court erred in ordering Appellant to pay restitution to the victim for the cost installing a fence around the rear portion of her property to prevent future attacks.

***State v. Hari*, 2016-Ohio-2987**

Traffic Violation: Radar: Judicial Notice

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2016/2016-Ohio-2987.pdf

The trial court erred in its determination that it could not take judicial notice of the "Stalker 2X" radar device, which operated using the "Doppler effect" in stationary mode, because the Third District had previously determined that a trial court could take judicial notice of the reliability of a radar device where the device employs the Doppler effect in stationary mode.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

***State v. Thurman*, 2016-Ohio-3002**

Search: Motion to Suppress

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2016/2016-Ohio-3002.pdf

The trial court erred in denying Appellant's motion to suppress where the Caucasian police officer did not have probable cause to arrest Appellant for aggravated disorderly conduct for calling him a "f**** n*****." (Read the opinion if you want to know what he said. I'm not repeating it.)**

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

Nothing new.

Eleventh Appellate District of Ohio

***State v. Caccamo*, 2016-Ohio-3006**

Jail-Time Credit

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2016/2016-Ohio-3006.pdf

The trial court erred in calculating Appellant's jail-time credit where it failed to consider the days he was incarcerated in another county jail on a detainer.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

***In re Von*, 2016-Ohio-3020**

Sex Offender Registration: R.C. 2950.15: Retroactive Application

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2016/2016-Ohio-3020.pdf

The "[r]egistration-termination procedure in R.C. 2950.15 does not apply to sex offenders who committed their offenses prior to January 1, 2008."

***State v. Adams*, 2016-Ohio-3043**

Appeal: Application to Reopen

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2016/2016-Ohio-3043.pdf

The Seventh District did not err in denying Appellant's application to reopen his direct appeal.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

***Luna Torres v. Lynch*, Slip Opinion No.14-1096**

Immigration: Aggravated Felony: Federal Offenses: State Offenses

Full Decision: http://www.supremecourt.gov/opinions/15pdf/14-1096_5hdk.pdf

Syllabus:

Any alien convicted of an "aggravated felony" after entering the United States is deportable, ineligible for several forms of discretionary relief, and subject to expedited removal. 8 U.S.C. §§1227(a)(2)(A)(iii), (3). An "aggravated felony" is defined as any of numerous offenses listed in §1101(a)(43), each of which is typically identified either as an offense "described in" a specific federal statute or by a generic label (*e.g.*, "murder"). Section 1101(a)(43)'s penultimate sentence states that each enumerated crime is an aggravated felony irrespective of whether it violates federal, state, or foreign law.

Petitioner Jorge Luna Torres (Luna), a lawful permanent resident, pleaded guilty in a New York court to attempted third-degree arson. When immigration officials discovered his conviction, they initiated removal proceedings. The Immigration Judge determined that Luna's arson conviction was for an "aggravated felony" and held that Luna was therefore ineligible for discretionary relief. The Board of Immigration Appeals affirmed. It found the federal and New York arson offenses to be identical except for the former's requirement that the crime have a connection to interstate or foreign commerce. Because the federal statute's commerce element serves only a jurisdictional function, the Board held, New York's arson offense is "described in" the federal statute, 18 U.S.C. §844(i), for purposes of determining whether an alien has been convicted of an aggravated felony. The Second Circuit denied review.

***Held*: A state offense counts as a §1101(a)(43) "aggravated felony" when it has every element of a listed federal crime except one requiring a connection to interstate or foreign commerce.**

Because Congress lacks general constitutional authority to punish crimes, most federal offenses include a jurisdictional element to tie the substantive crime to one of Congress's enumerated powers. State legislatures are not similarly constrained, and so state crimes do not need such a jurisdictional hook. That discrepancy creates the issue here – whether a state offense lacking a jurisdictional element but otherwise mirroring a particular federal offense can be said to be "described" by that offense. Dictionary definitions of the word "described" do not clearly resolve this equation one way or the other. Rather, two contextual considerations decide this case: §1101(a)(43)'s penultimate sentence and a well-established background principle that distinguishes between substantive and jurisdictional elements in criminal statutes. Pp. 4-21

(a) Section §1101(a)(43)'s penultimate sentence shows that Congress meant the term "aggravated felony" to capture serious crimes regardless of whether they are made illegal by the Federal Government, a State, or a foreign country. But Luna's view would substantially undercut that function by excluding from the Act's coverage all state and foreign versions of any

enumerated federal offense containing an interstate commerce element. And it would do so in a particularly perverse fashion – excluding state and foreign convictions for many of §1101(a)(43)'s gravest crimes (*e.g.*, most child pornography offenses), while reaching convictions for far less harmful offenses (*e.g.*, operating an unlawful gambling business). Luna theorizes that such haphazard coverage might reflect Congress's belief that crimes with an interstate connection are generally more serious than those without. But it is implausible that Congress viewed the presence of an interstate commerce element as separating serious from non-serious conduct. Luna's theory misconceives the function of interstate commerce elements and runs counter to the penultimate sentence's central message—that the state, federal, or foreign nature of a crime is irrelevant. And his claim that many serious crimes excluded for want of an interstate commerce element would nonetheless count as §1101(a)(43)(F) "crime[s] of violence" provides little comfort: That alternative would not include nearly all such offenses, nor even the worst ones. Pp. 7-14.

(b) The settled practice of distinguishing between substantive and jurisdictional elements in federal and criminal statutes also supports reading §1101(a)(43) to include state analogues that lack only an interstate commerce requirement. Congress uses substantive and jurisdictional elements for different reasons and does not expect them to receive identical treatment. See, *e.g.*, *Untied States v.* Yeriman, 468 U.S. 63, 68. And that is true where, as here, the judicial task is to compare federal and state offenses. See *Lewis v. Untied* States, 523 U.S. 155, 165. Pp. 14-19.

***Betterman v. Montana*, Slip Opinion No. 14-1457**

Post-Conviction: Sentencing: Speedy Trial

Full Decision: http://www.supremecourt.gov/opinions/15pdf/14-1457_2102.pdf

Syllabus:

Petitioner Brandon Betterman pleaded guilty to bail jumping after failing to appear in court on domestic assault charges. He was then jailed for over 14 months awaiting sentence, in large part due to institutional delay. He was eventually sentenced to seven years' imprisonment, with four of the years suspended. Arguing that the 14-month gap between conviction and sentencing violated his speedy trial right, Betterman appealed, but the Montana Supreme Court affirmed the conviction and sentence, ruling that the Sixth Amendment's Speedy Trial Clause does not apply to postconviction, presentencing delay.

Held: The Sixth Amendment's speedy trial guarantee does not apply once a defendant has been found guilty at trial or has pleaded guilty to criminal charges. Pp. 3-11.

(a) Criminal proceedings generally unfold in three discrete phases. First, the State investigates to determine whether to arrest and charge a suspect. Once charged, the suspect is presumed innocent until conviction upon trial or guilty plea. After conviction, the court imposes sentence. There are checks against delay geared to each particular phase. P.3.

(b) Statutes of limitations provide the primary protection against delay in the first stage, when the suspect remains at liberty, with the Due Process Clause safeguarding against fundamentally unfair prosecutorial conduct. *United States v. Lovasco*, 431 U.S. 783, 789, P.3.

(c) The Speedy Trial Clause right attaches when the second phase begins, that is, upon defendant's arrest or formal accusation. *United States v.* Marion, 404 U.S. 307, 320-321. The right detaches upon conviction, when this second stage ends. Before conviction, the accused is shielded by the presumption of innocence, *Reed v.* Ross, 468 U.S. 1, 4, which the Speedy Trial Clause implements by minimizing the likelihood of lengthy incarceration before trial, lessening the anxiety and concern associated with a public accusation, and limiting the effects of long delay on the accused's ability to mount a defense, Marion, 404 U.S., at 320. The Speedy Trial Clause thus loses force upon conviction.

This reading comports with the historical understanding of the speedy trial right. It "has its roots at the very foundation of our English law heritage," *Klopfer v. North* Carolina, 386 U.S. 213, 223, and it was the contemporaneous understanding of the Sixth Amendment's language that "accused" described a status preceding "convicted" and "trial" meant a discrete episode after which judgment (*i*.e., sentencing) would follow. The Court's precedent aligns with the text and history of the Speedy Trial Clause. See *Barker v. Wingo*, 407 U.S. 514, 532-533. Just as the right to speedy trial does not arise prearrest, *Marion*, 404 U.S., at 320-322, adverse consequences of postconviction delay are outside the purview of the Speedy Trial Clause. The sole remedy for a violation of the speedy trial right – dismissal of the charges – first the preconviction focus of the Clause, for it would be an unjustified windfall to remedy sentencing delay by vacating validly obtained convictions. This reading also finds support in the federal Speedy Trial Act of 1974 and numerous state analogs, which impose time limits for charging and trial but say nothing about sentencing. The prevalence of guilty pleas and the resulting scarcity of trials in today's justice system do not bear on the presumption-of-innocence protection at the heart of the Speedy Trial Clause. Moreover, a central feature of contemporary sentencing – the preparation and review of a presentence

investigation report – requires some amount of wholly reasonable presentencing delay. Pp. 3-9.

(d) Although the Constitution's presumption-of-innocence-protective speedy trial right is not engaged in the sentencing phase, statutes and rules offer defendant's recourse. Federal Rule of Criminal Procedure 32(b)(1), for example, directs courts to "impose sentence without unnecessary delay." Further, as at the prearrest stage, due process serves as a backstop against exorbitant delay. Because Betterman advanced no due process claim here, however, the Court expresses no opinion on how he might fare under that more pliable standard. Pp. 9-11.