

## Appellate Court Decisions - Week of 5/25/15

### First Appellate District of Ohio

*Nothing new.*

### Second Appellate District of Ohio

#### **State v. Overholser, 2015-Ohio-1980**

Sentencing: Consecutive Sentences

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-1980.pdf>

Appellant pleaded guilty to four counts of gross sexual imposition on an 11-year-old boy. He was sentenced to four years in prison on each count, consecutively, for a total of 20 years. The trial court erred in imposing consecutive sentences because the record does not support the trial court's consecutive-sentence findings. This is one of those cases you just have to read to get the full understanding. One interesting tidbit was that the Second District used the fact that Appellant was classified as a Tier II sex offender as a reason he was unlikely to re-offend. It said that classification would make it unlikely he would ever get a job giving him access to children.

#### **State v. Springer, 2015-Ohio-1941**

Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-1941.pdf>

Appellant was out on an OR bond in relation to some offenses that would carry a presumption of probation. At sentencing, the judge had Appellant drug tested, and she tested positive for cocaine. The judge said Appellant violated a condition of bond and under the statute, the presumption of probation was removed – and then sentenced her to 18 months of incarceration. However, the Second District reversed, finding that not using drugs was not a condition of Appellant's bond, and the presumption of probation was therefore not removed. The Second District is willing to read in such a condition if the defendant is notified at the bond hearing that drug testing will be part of bond, but it won't just read it in without some kind of notice to the defendant.

### **Third Appellate District of Ohio**

*Nothing new.*

### **Fourth Appellate District of Ohio**

*Nothing new.*

### **Fifth Appellate District of Ohio**

#### **State v. Marshall, 2015-Ohio-1986**

Sentencing: Federal/State

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2015/2015-Ohio-1986.pdf>

Appellee was sentenced in 1999 to consecutive sentences for violating probation from drug convictions in 1993 and 1996. Afterward, he was sentenced in 2000 on federal drug charges. Appellee finished his federal sentence in 2009. In 2013, Appellee was ordered to prison on another drug conviction. There, the Department of Rehabilitation and Correction determined Appellee still had to serve his time from the 1999 sentences. The trial court then erred in sua sponte filing a judgment entry indicating the 1999 consecutive sentences were supposed to run concurrently to the federal sentence. Because when appellee was sentenced in 1999 he had not yet committed the crime leading to the 2000 federal sentence, the trial court did not have authority under R.C. 2929.41(A) to designate the state sentences as concurrent or consecutive to the federal sentence. Also, the trial court lacked authority to revisit its prior sentence.

### **Sixth Appellate District of Ohio**

#### **State v. Lapoint, 2015-Ohio-1990**

Speedy Trial

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/6/2015/2015-Ohio-1990.pdf>

The trial court erred in denying Appellant's motion to dismiss for violation of her speedy trial rights. This is basically a long-story-short situation: The State had reasons to know Appellant was in jail in Florida, but never lodged

a detainer against her or engaged in any reasonable diligence to secure her availability to toll her speedy trial. Therefore, her time was not tolled and the 320 days that passed between the date of her arrest warrant and turning herself in to court were beyond the 270 days the State was allowed – and her speedy trial rights were violated.

### 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. Dickman, 2015-Ohio-1915**

**Motion to Suppress: Incident to Arrest**

**Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2015/2015-Ohio-1915.pdf>

The trial court did not err in granting Appellee's motion to suppress the search of his person after his arrest. The police officer drove past Appellee (the passenger) and the driver of an SUV in a grocery store parking lot. The police officer found it suspicious the driver did not look at her at all, instead staring forward the whole time. The officer approached the vehicle, but before she could get there, the drive had already left to go into the grocery store. Appellee got out of the SUV, which set off the alarm. When doing so, Appellee also dropped some plastic baggies. The officer demanded Appellee's identification, but Appellee refused. Appellee would eventually try to run, but the officer could not articulate any offense Appellee committed before arresting him. The search yielded some bath salts. The Tenth District also said there was no good-faith exception for the search.

### 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.*