

## Appellate Court Decisions - Weeks of 7/1/19 and 7/8/19

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

### First Appellate District of Ohio

#### **State v. Banks, C-180315**

Sexual predator classification

Full Decision: (No web cite as of yet).

Appellant's sexual-predator classification is vacated, as he was not given proper notice of his sexual-offender-classification hearing pursuant to former R.C. 2950.09(B)(2); cause remanded for a new classification hearing.

### Second Appellate District of Ohio

#### **State v. Wilson, 2019-Ohio-2593**

Ineffective assistance of counsel

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2019/2019-Ohio-2593.pdf>

Trial counsel was ineffective for failing to file an affidavit of indigency prior to sentencing because there was a reasonable probability that the court would have relieved defendant of the mandatory fine; also, trial court erred in calculating the amount of time remaining on defendant's post-release control.

#### **In re A.Y., 2019-Ohio-2589**

Plea

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2019/2019-Ohio-2589.pdf>

No contest plea by juvenile was not entered knowingly, intelligently, and voluntarily where court failed to advise her of the nature of the allegations, the consequences of her plea, the elements of the offense, and the substance of the complaint as required by Juv.R. 29(D)(1) and (2); trial court also incorrectly advised juvenile as to the minimum sentence.

***In re J.R., 2019-Ohio-2594***

**Sentencing**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2019/2019-Ohio-2594.pdf>

**Under R.C. 5139.52(F), trial court erred when it ordered the 90-day period of institutionalization for a supervised-release violation to be served consecutively with any other commitment, as statute mandates that the time must be served concurrently.**

***State v. Celaya, 2019-Ohio-2747***

**Suppression**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2019/2019-Ohio-2747.pdf>

**Trial court's grant of motion to suppress search was not error, as search exceeded the scope of appellant's consent to search his right front pants pocket when officer also searched his jacket pocket and did a second search of the pants pocket without consent.**

**Third Appellate District of Ohio**

*Nothing to report.*

**Fourth Appellate District of Ohio**

***State v. Park, 2019-Ohio-2683***

**Sentencing**

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2019/2019-Ohio-2683.pdf>

**Trial court erred in sentencing appellant to a single, five-year lump sum of community control for three counts of unlawful sexual conduct with a minor, rather than a separate sentence for each offense; case remanded for re-sentencing.**

***State v. Woodburn, 2019-Ohio-2757***

Sufficiency; theft

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2019/2019-Ohio-2757.pdf>

In conviction of two counts of theft, conviction for one count was not supported by sufficient evidence, as state presented no evidence that appellant obtained or exerted control over the funds in joint account without her mother's consent.

***State v. Lask, 2019-Ohio-2753***

Plea

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2019/2019-Ohio-2753.pdf>

Plea was not made knowingly and voluntarily where "the court incorrectly told [appellant] that his guilty plea preserved his right to appeal the suppression decision, and but for that incorrect information, [appellant] would not have pleaded guilty."

***State v. Patton, 2019-Ohio-2769***

Restitution

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2019/2019-Ohio-2769.pdf>

Trial court erred in ordering restitution without competent, credible evidence in the record to establish the amount.

**Fifth Appellate District of Ohio**

***State v. Buttner, 2019-Ohio-2616***

Post-release control

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2019/2019-Ohio-2616.pdf>

Summary from the Fifth District: “[T]rial court did not have the authority to place [appellant] on post-release control, as post-release control did not exist when he committed the offenses of gross sexual imposition [in 1992] for which his probation was revoked and sentence imposed.” (Appellant had served a lengthy prison sentence for five counts of rape, prior to being placed on probation for the gross sexual imposition offenses.)

***State v. Perry, 2019-Ohio-2699***

Plea withdrawal

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2019/2019-Ohio-2699.pdf>

Summary from the Fifth District: “[T]rial court abused its discretion by finding that it substantially complied with the requirements of R.C. 2943.031 [and denying appellant’s motion to withdraw his plea]. The trial court did not provide a verbatim recitation and failed to include two of the potential consequences [of deportation] of a guilty finding.”

**Sixth Appellate District of Ohio**

***State v. Gray, 2019-Ohio-2662***

Suppression

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2019/2019-Ohio-2662.pdf>

Trial court did not err in granting motion to suppress traffic stop because police officer did not have a reasonable suspicion of a traffic violation and “a vehicle [that] is traveling slower than the speed limit on any road in Ohio— single lane roads to multilane interstates and every other kind of road— without a showing that traffic was impeded or that the slow speed was unreasonable for the conditions cannot be a basis for a stop.” R.C. 4511.25(B). Also holding that O.A.C. 5537-2-09 was void for vagueness.

**Seventh Appellate District of Ohio**

***State v. Timmons, 2019-Ohio-2723***

Alford plea

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2019/2019-Ohio-2723.pdf>

Appellant's *Alford* plea in accordance with *North Carolina v. Alford*, 400 U.S. 25, is vacated, as trial court failed to conduct the heightened analysis that is required when a defendant enters an *Alford* plea; specifically "the trial court failed to inquire whether Appellant was motivated by a desire for a lesser charge or fear of the consequences of a jury trial."

## Eighth Appellate District of Ohio

***In re D.P.*, 2019-Ohio-2752**

Delinquency; sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-2752.pdf>

Juvenile court erred by ordering juvenile, who had been adjudicated a delinquent, incarcerated in an adult facility in violation of R.C. 2152.19(A).

***State v. Dickerson*, 2019-Ohio-2738**

Final, appealable order

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-2738.pdf>

Summary from Eighth District: "it is our determination that the trial court's denial of the state's motion to reinstate Dickerson's convictions does not satisfy the requirements of a final order under R.C. 2505.02(B)(3)," and appeal dismissed.

## Ninth Appellate District of Ohio

***State v. Brown*, 2019-Ohio-2599**

Attempted sex offense

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2019/2019-Ohio-2599.pdf>

Conviction of attempted sexual battery and attempted child endangering was not supported by sufficient evidence as defendant's intent to commit a crime does not constitute an attempt nor does mere preparation; there must be some overt act, some substantial step by defendant which demonstrates a purpose to commit a crime. Here, defendant only verbally expressed his desire to engage in sexual conduct with his daughter, but never committed any overt acts in support of that desire.

***State v. Heil, 2019-Ohio-2602***

State's appeal; jurisdiction

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2019/2019-Ohio-2602.pdf>

State's appeal from an order of the municipal court precluding it from introducing expert testimony is dismissed for lack of jurisdiction; state did not have an appeal of right, and state did not ask for leave to appeal.

***State v. Swaney, 2019-Ohio-2611***

Insufficient evidence; forgery

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2019/2019-Ohio-2611.pdf>

Conviction of forgery was not supported by sufficient evidence, since there was no evidence presented that defendant signed someone else's name on his own timesheets.

***In re P.C., 2019-Ohio-2603***

Sex offender classification

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2019/2019-Ohio-2603.pdf>

Juvenile court committed plain error when it classified juvenile as a Tier III juvenile sex offender under R.C. 2152.82, as that section only applies to offenders that have previously been adjudicated delinquent of a sex offense; and court also was plainly without authority when it classified him at the time of disposition instead of on his release from a secure facility in accordance with R.C. 2152.83. Classification as Tier III offender is void and is vacated.

**State v. Moore, 2019-Ohio-2764**

Application to reopen appeal

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2019/2019-Ohio-2764.pdf>

Application to reopen appeal in accordance with App.R. 26(B) granted since appellate counsel was ineffective in failing to raise the issue that appellant did not enter his plea knowingly, intelligently, and voluntarily; trial court accepted guilty plea without advising him that the state had the burden to prove his guilt beyond a reasonable doubt.

**Tenth Appellate District of Ohio**

*Nothing to report.*

**Eleventh Appellate District of Ohio**

**State v. Burns, 2019-Ohio-2663**

Weight of the evidence; theft

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2019/2019-Ohio-2663.pdf>

In conviction of two counts of theft, conviction for one count was against the weight of the evidence since appellant substantially performed work he contracted to perform, and there was no evidence presented that appellant intended to permanently deprive alleged victim of funds.

**State v. Thomas, 2019-Ohio-2795**

Ineffective assistance of counsel

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2019/2019-Ohio-2795.pdf>

In conviction of murder, trial counsel was ineffective in not requesting a castle doctrine jury instruction where there is evidence that supports an affirmative defense of self-defense, see R.C. 2901.09(B).

## Twelfth Appellate District of Ohio

### ***State v. Garrett, 2019-Ohio-2672***

#### Sentencing

##### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2019/2019-Ohio-2672.pdf>

After en banc consideration of a conflict in appellate court's opinion, prior holding in case overruled; defendant-employee of a home care agency found to have held a "position of trust" as the victim's caregiver equivalent to a fiduciary relationship, R.C. 2929.13(B)(1)(b)(viii).

### ***State v. Martin, 2019-Ohio-2792***

#### Plea

##### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2019/2019-Ohio-2792.pdf>

Trial court committed plain error by not properly advising appellant of her right to a jury trial and state's burden to prove her guilt beyond a reasonable doubt.

### ***State v. Barrett, 2019-Ohio-2786***

Sufficiency; failure to provide notice of change of address

##### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2019/2019-Ohio-2786.pdf>

Trial court erred in denying appellant's Crim.R. 29 motion for acquittal; the state did not present sufficient evidence that appellant had a duty to register more than 10 years after his 2006 conviction, as it failed to present evidence that appellant had been incarcerated which would have tolled his 10-year registration requirement.

## Supreme Court of Ohio

*Nothing to report.*

**Sixth Circuit Court of Appeals**

*Nothing to report.*

**Supreme Court of the United States**

*Nothing to report.*