

Appellate Court Decisions - Week of 7/25/16

First Appellate District of Ohio

State v. Robinson, 2016-Ohio-5114

Community Control: Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-5114.pdf>

Summary from the First District:

“The record supported the trial court’s determination that defendant violated the terms of his community control when he failed to complete a treatment program, the completion of which was a condition of his community control, where defendant simply refused to comply with the program, and the refusal was representative of a history of defendant’s defiance in the case.

“The trial court properly sentenced defendant to eight years in prison for felonious assault after he violated the terms of his community control where the sentence was within the authorized range and did not exceed the prison term specified in the notice provided to defendant at his original sentencing hearing, and the record failed to rebut the presumption that the trial court considered the relevant provisions of R.C. 2929.11(B) and 2929.12(A)-(E).

“The trial court’s failure to warn defendant not to ingest or inject drugs of abuse while in prison and that he would be drug tested in prison constituted harmless error.

“The trial court was not required, under R.C. 2967.193, to inform defendant that he may be eligible to earn days of credit.

“The trial court erred where, at the sentencing hearing subsequent to the revocation of defendant’s community control, it failed to notify defendant that he would be required to serve three years of postrelease control, because the court sentenced the defendant anew and was required to comply with the relevant sentencing statutes, including R.C. 2929.19(B)(3)(d)-(e) and 2967.28(C).”

State v. Rucker, 2016-Ohio-5111

Postrelease Control: Sentencing: Sex Offenses

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-5111.pdf>

Summary from the First District:

“The trial court properly notified defendant that his five-year term of postrelease control was mandatory, where the court said to defendant at the sentencing hearing, ‘[A]fter you are released from the Department of Corrections * * * you’ll be on a period of supervision by them for a period of five years,’ and the court stated in the sentencing entry, ‘As part of the sentence in this case, the defendant shall be supervised by the Adult Parole Authority after defendant leaves prison, which is referred to as post-release control, for five (5) years.’

“Where defendant, after his conviction for unlawful sexual conduct with a minor, was improperly classified by the trial court as a Tier III sex offender, and the appellate court reversed the Tier III classification and remanded the cause for the trial court to correct the classification to Tier II, but the trial court did not carry out the remand order before defendant was released from his five-year prison sentence, and where, after his release from prison, defendant filed a motion for relief from the duty to register as a sex offender arguing that the trial court had no authority to carry out the remand order after defendant had been released from prison, the trial court’s judgment overruling defendant’s motion on the ground that it was bound by the appellate court’s order of remand must be reversed and the cause must be remanded for the trial court to consider whether it has authority to carry out the remand order to notify defendant of and impose upon him Tier II sex-offender registration requirements.”

State v. Jones, 2016-Ohio-5109

Appellate Review: Jurisdiction: Postconviction: Postrelease Control

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-5109.pdf>

Summary from the First District:

“In an appeal from the overruling of a postconviction motion, the court of appeals had no jurisdiction to entertain assignments of error challenging the denial of relief on grounds not advanced in the motion.

“R.C. 2953.21 et seq. did not confer upon the common pleas court jurisdiction to entertain defendant’s postconviction claims challenging the trial court’s nunc pro tunc resentencing entry or trial counsel’s effectiveness concerning community-service-for-nonpayment-of-costs notification: the claims were reviewable under the postconviction statutes, but did not satisfy the statutes’ time restrictions or jurisdictional requirements for a late postconviction claim.

“In an appeal from the overruling of a postconviction motion, the court of appeals had no jurisdiction to entertain an assignment of error challenging the denial of relief on the

ground that the trial court had failed to provide at sentencing the community-service-for-nonpayment-of-costs notification required by R.C. 2947.23(A)(1): the judgment denying relief on that ground was not reviewable under the jurisdiction conferred upon an intermediate appeals court 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’; nor was the matter reviewable by either the common pleas court or the court of appeals under the jurisdiction to correct a void judgment.

“Defendant’s sentence was subject to correction as void to the extent that it did not conform with the statutory mandates concerning postrelease control, because the mandatory five-year period imposed was not authorized for the special felony of murder.”

State v. Ventura, 2016-Ohio-5151

Sentencing: Crim.R. 32(A): Domestic Violence: Manifest Weight

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-5151.pdf>

Summary from the First District:

“Defendant’s conviction for domestic violence was not contrary to the manifest weight of the evidence where the victim, the defendant’s wife, testified that during the course of an argument the defendant had punched her in the head with his closed fist and had later held her down on their bed and threatened her with a pocket knife; although defendant denied hitting his wife or threatening her with a knife, the trial court did not lose its way in choosing to afford more weight to the wife’s testimony than the defendant’s testimony.

“The trial court’s calculated and purposeful decision to hold the defendant without bail following the guilty finding after the bench trial and to delay the imposition of his sentence for first-degree misdemeanor domestic violence for 84 days based on the court’s stated concerns that (1) jail overcrowding would prompt the sheriff to release the defendant early and the defendant would not serve a portion of the sentence the court would eventually impose, and (2) the victim would not receive notice of the defendant’s release, violated Crim.R. 32(A)’s mandate that the court impose the sentence without “unnecessary delay,” and required the vacation of the defendant’s sentence, where the record contained no evidence of jail overcrowding, the sheriff had no legal authority to grant an early release to the defendant, and the trial court could have placed an entry on the sentencing sheet asking the sheriff to notify the victim prior to the defendant’s release.”

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

State v. Smith, 2016-Ohio-5062

**Sentencing: Merger: Engaging In A Pattern of Corrupt Activity:
Participating In A Criminal Gang**

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2016/2016-Ohio-5062.pdf>

The trial court erred in failing to merge Appellant's convictions for engaging in a pattern of corrupt activity and participating in a criminal gang as allied offenses of similar import.

Fifth Appellate District of Ohio

Nothing new.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

Cleveland v. Melton, 2016-Ohio-5139

OVI: Search: Motion to Suppress

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-5139.pdf>

The trial court did not err in granting Appellee's motion to suppress the field sobriety tests the officer conducted on Appellee. While the officer had probable cause to stop Appellee for speeding, the only evidence of intoxication was an odor of alcohol coming from Appellee's person, not his breath, and his admission of drinking one beer.

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

Nothing new.

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

State v. Jones, 2016-Ohio-5105

Sixth Amendment: Speedy Trial: Preindictment Delay: Standard of Review

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-5105.pdf>

The Eighth District improperly applied the two-step, burden-shifting analysis for determining whether preindictment delay constitutes a Due Process violation. A defendant must establish actual prejudice before the burden shifts to the state to justify its delay. However, the testimony of witnesses that have died but were never questioned is not fatally speculative and can satisfy the requirement of actual prejudice. As the Court put it, [p]roven unavailability of specific evidence that would attack credibility or weight of state's evidence may satisfy due-process requirement of actual prejudice." The Court remanded the case for a determination of the case by the Eighth District under the proper standard.

State v. Mole, 2016-Ohio-5124

Criminal Law: Sexual Battery: R.C. 2907.03(A)(13): Constitutionality

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-5124.pdf>

This case is the most strongly worded opinion I've ever seen from the Ohio Supreme Court regarding its independence when it comes to interpreting the Ohio Constitution and its greater protections than the federal constitution. I really suggest you read this because it basically says if the federal constitution and the Ohio constitution have provisions that are the same or similar, the Ohio Supreme Court really only considers the analysis from federal courts as persuasive authority and it is free to interpret its own constitution as it sees fit.

“In this appeal, we address the validity of a facial constitutional attack, on equal-protection grounds, against a subdivision of Ohio’s sexual-battery statute, R.C. 2907.03(A)(13). R.C. 2907.03(A)(13) prohibits sexual conduct when one person is a minor and ‘the offender is a peace officer, and the offender is more than two years older than the other person.’

“R.C. 2907.03 is generally a valid scheme insofar as it imposes strict liability for sexual conduct between various classes of offenders who exploit their victims through established authoritarian relationships. But subdivision (A)(13) irrationally imposes that same strict liability on peace officers even when there is no occupation-based relationship between the officer and the victim. We therefore conclude that R.C. 2907.03(A)(13) is an arbitrarily disparate treatment of peace officers that violates equal protection under the Ohio Constitution and the United States Constitution. Accordingly, we affirm the decision of the Eighth District Court of Appeals declaring R.C. 2907.03(A)(13) facially unconstitutional.”

Sixth Circuit Court of Appeals

Nothing new.