

Appellate Court Decisions - Week of 8/22/16

First Appellate District of Ohio

State v. Morris, 2016-Ohio-5490

Evidence: Kidnapping: Aggravated Robbery: Felonious Assault: R.C. 2941.25: Allied Offenses: Counsel

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-5490.pdf>

Summary from the First District:

“Where defendant forced one victim into a second-floor apartment at knifepoint and the second victim followed, defendant jumped on the first victim and threatened him with a knife, defendant told the victims not to leave and two other men in the apartment told the victims to listen to defendant because he was ‘crazy,’ the state presented sufficient evidence to sustain the kidnapping conviction as to the second victim because she was restrained in the second-floor apartment by defendant’s threat of violence.

“The state presented sufficient evidence to support defendant’s conviction for felonious assault against the second victim where she was severely injured after jumping from the second-floor balcony in an attempt to escape, because escape is a natural consequence of holding a person hostage; but the state did not present sufficient evidence to sustain defendant’s conviction for aggravated robbery against the same victim because her injuries resulted from her voluntary jump off of the balcony, and therefore, the state failed to establish that defendant inflicted her injuries through any direct action. [*But see* DISSENT: The evidence was sufficient to establish that defendant recklessly inflicted the second victim’s injuries because he set the events in motion that caused those injuries, and therefore, his conviction for aggravated robbery was supported by sufficient evidence.]

“The trial court did not commit plain error in failing to merge the kidnapping and aggravated-robbery counts as to the second victim where the defendant’s prolonged restraint of the victim demonstrated a separate animus for the two offenses.

“Defendant’s counsel was not ineffective for failing to move for dismissal of the kidnapping charges or requesting merger of the kidnapping and aggravated-robbery counts as to the second victim where neither argument would have been successful.”

State v. Mosley, 2016-Ohio-5525

Postconviction: Jurisdiction: Sentencing

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-5525.pdf>

Summary from the First District:

“Defendant’s postconviction challenge to his postrelease-control notification was not reviewable under R.C. 2953.21 et seq., because he sought relief based on a statutory, rather than a constitutional, violation; nor was the challenge reviewable under a court’s jurisdiction to correct a void judgment, because he was sentenced in compliance with the postrelease-control statutes.

“The common pleas court had jurisdiction to correct defendant’s sentences, because they were void to the extent that they did not include the driver’s license suspension mandated by R.C. 2925.03(D)(2) and 2925.03(G) and the fine mandated by R.C. 2925.03(D)(1) and 2929.18(B)(1).”

State v. Farris, 2016-Ohio-5527**Appellate Review****Full Decision:**

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2016/2016-Ohio-5527.pdf>

Summary from the First District:

“Defendant’s appeal must be dismissed as moot where he was convicted of a misdemeanor criminal offense, failed to seek a stay of the sentence from the trial court, and voluntarily completed a sentence exceeding the time already served, and no evidence is offered from which an inference can be drawn that defendant will suffer some actual collateral disability or loss of civil rights as a result of the conviction.”

This case is a reminder that in misdemeanor cases, it is usually necessary, and always good practice, to seek a stay of sentence pending appeal. The client may not want it, but if the client voluntarily serves the sentence, the appeal will more than likely be moot. Do not worry if your client served the entire sentence prior to conviction – that situation does not make an appeal moot. Long story short, if your client wants to appeal a misdemeanor, ask for a stay of the sentence. (Yes, there are some situations where it might not be necessary, like more than 2 years of community control, but why risk it?)

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

Nothing new.

Sixth Appellate District of Ohio

State v. Waxler, 2016-Ohio-5435

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2016/2016-Ohio-5435.pdf>

Summary from the Sixth District:

“Defendant committed the subject offenses and was originally sentenced before H.B. No. 86 became effective. However, because we vacated his original sentence due to a substantive erroneous finding and remanded for resentencing, and because resentencing occurred after H.B. 86’s effective date, the trial court was obligated under R.C. 1.58(B) to consider amended R.C. 2929.14(C)(4) before imposing consecutive sentences.”

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

State v. Knox, 2016-Ohio-5519

Pretrial: Motion to Dismiss: Crim.R. 12

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-5519.pdf>

Summary from the Eighth District:

“The trial court’s granting of defendant’s motion to dismiss the indictment is affirmed because the trial court could consider evidence outside the indictment based on the fact that the reason for the dismissal was not a ‘general issue for trial’ that the state would have to prove.”

The issue that was not a general issue for trial in this failure to verify address case was the fact that Appellee was never notified of his correct sex offender status in a separate county.

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. Montgomery, 2016-Ohio-5487

Aggravated Murder: Capital Punishment

Full decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-5487.pdf>

“In a capital case, the aggravated circumstances codified in R.C. 2929.04(A) require the production of evidence sufficient to prove their existence beyond a reasonable doubt.” Convictions and sentence of death affirmed.

State v. Jackson, 2016-Ohio-5488

Aggravated Murder: Capital Punishment

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-5488.pdf>

Death penalty affirmed.

***State v. Hand*, 2016-Ohio-5504**

Juvenile: Sentencing: Constitutionality: R.C. 2901.08(A)

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2016/2016-Ohio-5504.pdf>

Syllabus of the Court:

1. R.C. 2901.08(A) violates the Due Process Clauses of Article I, Section 16 of the Ohio Constitution and the Fourteenth Amendment to the United States Constitution because it is fundamentally unfair to treat a juvenile adjudication as a previous conviction that enhances either the degree of or the sentence for a subsequent offense committed as an adult.

2. Because a juvenile adjudication is not established through a procedure that provides the right to a jury trial, it cannot be used to increase a sentence beyond a statutory maximum or mandatory minimum. (*Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), and *Alleyne v. United States*, --- U.S. ----, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013), followed.)

Sixth Circuit Court of Appeals

***John Does #1-5; Mary Doe v. Snyder*, Nos. 15-1536/2346/2486**

Sex Offender Registry: Ex Post Facto: Michigan

Full Decision: <http://www.opn.ca6.uscourts.gov/opinions.pdf/16a0207p-06.pdf>

As an extremely simplified summary of a complicated issue, the Sixth Circuit held that Michigan's Sex Offender Registration Act is an ex post facto law.