

Appellate Court Decisions - Week of 10/4/21

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

First Appellate District of Ohio

State v. Hammock, C-200368

Contempt; sentencing

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

Trial court did not err in holding appellant in contempt for recording court proceedings with her cellphone, as that conduct “obstructed the administration of justice . . . [however,] court abused its discretion in ordering that [appellant’s] cellphone be destroyed, as that punishment was not commensurate with the gravity of the offense”

State v. Austin, C-210140 & C-210141

Abuse of discretion

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

Convictions for domestic violence and aggravated menacing were affirmed.

I am writing about this case because, as one of my attorneys pointed out, it appears that the First District is clarifying abuse of discretion a bit, based on the OSC’s recent decision in *Johnson v. Abdullah*, Slip Opinion No. 2021-Ohio-3304. Here is what the COA said:

“Because the ‘trial court is in the best position to rule on a requested continuance after considering all the surrounding circumstances,’ we ‘must not reverse the denial of a continuance unless there has been an abuse of discretion.’ *State v. Martin*, 1st Dist. Hamilton No. C-050584, 2006-Ohio-5263, ¶ 24. Abuse of discretion occurs when ‘a court exercis[es] its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority.’ *Johnson v. Abdullah*, Slip Opinion No. 2021-Ohio-3304, ¶ 35. And, as the Supreme Court recently clarified, ‘courts lack the discretion to make errors of law.’ *Id.* at ¶ 39.”

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

State v. Waggle, 2021-Ohio-3457

Violent Offender Registry Database

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2021/2021-Ohio-3457.pdf>

Trial court erred in failing “to inform [a]ppellant of the procedure and criteria for rebutting the presumption he would be placed on the VOD and possible outcome” Case remanded for proper advisements.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Cornely, 2021-Ohio-3459

Community control sanctions violation

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-3459.pdf>

Trial court erred in extending appellant’s community control sanctions for two additional years for an alleged violation of a no-contact order with his wife. First, “[t]he court did not follow the proper procedures as enumerated in R.C. 2929.25(D)(1). The statute makes clear that an alleged violation must be brought before the court by specific enumerated entities

and people.” The alleged violation came to the court via a motion for contempt from appellant’s wife; but a contempt hearing is not the proper method of punishing someone for a community control violation. Second, there was no violation of the no-contact order where the communication came from appellant’s lawyer and was delivered to his wife’s lawyer, which was a method of communication that had been approved by the court.

State v. Tarulli, 2021-Ohio-3462

Forfeiture

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-3462.pdf>

Trial court erred in ordering appellant’s firearm to be forfeited; “there is no evidence in the record that the prosecution provided any notice to [appellant] of the forfeiture claim of his firearm or that the charging document contained a forfeiture specification as required by R.C. 2981.04(A).” The court’s entries concerning appellant’s placement in the Selective Intervention Program (“SIP”) and the entries at the completion of the SIP did not contain any terms regarding the forfeiture of any of appellant’s firearms.

State v. Barnes, 2021-Ohio-3469

Competency

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-3469.pdf>

Trial court erred when it proceeded with a jury trial without holding a hearing on appellant’s competency where “the issue of competency is raised prior to trial, the record is devoid of any formal finding of competency, and there are insufficient indicia of competency.” R.C. 2945.37(B) is clear that the court “ ‘shall’ hold a hearing when the defendant’s competency to stand trial is raised before trial begins and there exists ‘sufficient indicia’ of incompetence.”

Ninth Appellate District of Ohio

State v. Brown, 2021-Ohio-3443

No contest plea

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2021/2021-Ohio-3443.pdf>

Appellant's no contest plea was not knowingly, intelligently, nor voluntarily made where the trial court failed to advise her of the effect of her plea.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

State v. Evans, 2021-Ohio-3479

Sentencing; community control violation

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2021/2021-Ohio-3479.pdf>

Trial court erred in sentencing appellant to six months in jail for violating his community control sentence when the violation occurred after the two-year period of community control had ended.

Twelfth Appellate District of Ohio

State v. Tolle, 2021-Ohio-3401

Sufficiency; deception to obtain dangerous drug

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2021/2021-Ohio-3401.pdf>

Evidence was insufficient to support conviction for deception to obtain a dangerous drug. "[T]he record is devoid of any evidence regarding the circumstances under which appellant came to possess Carver's prescription from which it may be determined that she procured it by deception."

Supreme Court of Ohio

State v. Toles, 2021-Ohio-3531

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2021/2021-Ohio-3531.pdf>

OSC once again follows its recent sentencing jurisprudence and finds “ ‘R.C. 2953.08(G)(2)(b) * * * does not provide a basis for an appellate court to modify or vacate a sentence based on its view that the sentence is not supported by the record under R.C. 2929.11 and 2929.12.’ ” *Jones* at ¶ 9. *State v. Jones*, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649.

But see Donnelly’s scathing dissent: “By summarily affirming the court of appeals’ judgment and effectively answering that question in the negative, the majority has foreclosed any possibility for a criminal defendant to obtain appellate review of mistaken, if not malicious, sentencing errors, leaving trial courts wholly free to impose sentences without any constraints whatsoever.

{¶ 21} But perhaps the majority’s mounting embrace of appellate abdication should come as no surprise. According to a report profiling the sentencing guidelines of 21 states, Ohio (along with Wisconsin) ranked dead last in providing mandatory-sentencing guidelines or meaningful review of a sentencing court’s discretion. See Neal B. Kauder & Brian J. Ostrom, *State Sentencing Guidelines: Profiles and Continuum* (July 2008), available at National Center for State Courts, <https://ncsc.contentdm.oclc.org/digital/collection/criminal/id/130/rec/1> (accessed Sept. 27, 2021) [<https://perma.cc/V6GV-LA7C>]. The result is that judges are vested with boundless and largely unrestrained power to incarcerate criminal defendants with no protective guardrails to hold the exercise of that power in check. Sentences for similar criminal offenses, both violent and nonviolent, are literally all over the board.”

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.