

## Appellate Court Decisions - Week of 3/29/21

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

### First Appellate District of Ohio

*Nothing to report.*

### Second Appellate District of Ohio

#### ***State v. Gay, 2021-Ohio-970***

Agreed plea and sentence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2021/2021-Ohio-970.pdf>

Appellant's guilty plea was not made knowingly, intelligently, and voluntarily "when a trial court [unconditionally] promises a certain sentence, the promise becomes an inducement to enter [the] plea, and unless that sentence is given, the plea is not voluntary." (Citation omitted.) [*State v. Layman*, 2d Dist. Montgomery No. 22307, 2008-Ohio-759] at ¶ 15, quoting *State v. Bonnell*, 12th Dist. Clermont No. CA2001-12-94, 2002-Ohio-5882, ¶ 18. Thus, a trial court 'commits reversible error when it participates in plea negotiations but fails to impose the promised sentence.' *Id.*, quoting *Bonnell* at ¶ 18.' " Here, the trial court had promised a five-year sentence, but sentenced appellant to six years after he failed to appear for sentencing; however, when there is a "change of circumstances," the trial court must advise appellant of its intent to "deviate" from the promised sentence and give appellant an opportunity to withdraw his plea.

### Third Appellate District of Ohio

#### ***State v. Fritts, 2021-Ohio-895***

Plea

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2021/2021-Ohio-895.pdf>

Appellant's guilty plea was not made knowingly, intelligently, and voluntarily where trial court failed to comply with Crim.R. 11(C)(2)(c); court failed to orally advise appellant that by pleading guilty, he was waiving various constitutional rights. Appellant's written waiver was insufficient.

## Fourth Appellate District of Ohio

**State v. Howerton, 2021-Ohio-913**

Speedy trial

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2021/2021-Ohio-913.pdf>

**Trial court erred when it denied appellant’s motion to dismiss based on statutory speedy trial grounds. There was no written waiver of appellant’s speedy trial rights nor one made in open court on the record; nor does the record include evidence that the trial court set the trial date for the convenience of defense counsel. Conviction vacated and appellant discharged.**

## Fifth Appellate District of Ohio

*Nothing to report.*

## Sixth Appellate District of Ohio

**State v. Combs, 2021-Ohio-982**

Ineffective assistance of counsel

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2021/2021-Ohio-982.pdf>

**Trial counsel was ineffective for advising appellant to plead guilty to the vandalism charge when the state had already admitted it could not prove the facts supporting the vandalism charge (the state had already dismissed the burglary charge because it could not prove the structure entered was occupied); and appellant’s guilty plea did not waive this error. “ [A] guilty plea waives all appealable errors, including claims of ineffective assistance of counsel, except to the extent that the errors precluded the defendant from knowingly, intelligently, and voluntarily entering his or her guilty plea.” [State v. Riddle, 88 N.E.3d 475, 2017-Ohio-1199, ¶ 26 (2d Dist.).] (Emphasis added.)**

## Seventh Appellate District of Ohio

*Nothing to report.*

## Eighth Appellate District of Ohio

*Nothing to report.*

## Ninth Appellate District of Ohio

### ***State v. Consiglio, 2021-Ohio-990***

Suppression

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2021/2021-Ohio-990.pdf>

**Trial court erred in denying appellant’s motion to suppress where appellant’s arrest was not supported by probable cause. Trial court reliance on appellant’s rapid deceleration was never mentioned in police officer’s testimony as indicative of impairment, and field sobriety tests were not given in substantial compliance with NHTSA standards.**

## Tenth Appellate District of Ohio

### ***State v. Fletcher, 2021-Ohio-919***

Restitution

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2021/2021-Ohio-919.pdf>

**Trial court erred in ordering restitution without a hearing after appellant objected and disputed the amounts. State conceded error.**

## Eleventh Appellate District of Ohio

### ***State v. Bell, 2021-Ohio-899***

Subject matter jurisdiction

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2021/2021-Ohio-899.pdf>

**In convictions for assault and endangering children, child endangering conviction was void and was reversed, but conviction for assault was affirmed. Pursuant to R.C. 2151.23(A)(6), juvenile court, not municipal court, had original jurisdiction to “ ‘hear and determine all criminal cases in which an adult is charged with’ endangering children in violation of R.C. 2919.22(B)(1), ‘provided the charge is not included in an indictment that also charges the alleged adult offender with the commission of a felony arising out of the same actions that are the basis of the alleged violation[.]’ ”**

**State v. McLandrich, 2021-Ohio-1015**

Record sealing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2021/2021-Ohio-1015.pdf>

**Trial court erred in denying appellant's application to seal her convictions; court erroneously concluded her violating a temporary restraining order conviction and two probation violations were not eligible offenses. State conceded error. Case remanded for new hearing.**

**Twelfth Appellate District of Ohio**

*Nothing to report.*

**Supreme Court of Ohio**

*Nothing to report.*

**Sixth Circuit Court of Appeal**

*Nothing to report.*

**Supreme Court of the United States**

*Nothing to report.*