

Appellate Court Decisions - Week of 7/12/21

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

First Appellate District of Ohio

State v. Miller, C-200275

Guilty plea

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

Trial court erred in sua sponte vacating appellant's guilty plea without any motion or request by appellant to do so; Crim.R. 32.1 does not apply to a trial court, only to a defendant.

State v. Harris, C-200281

Jail-time credit

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

Trial court erred when it refused to grant appellant jail-time credit for a concurrent jail sentence. “[U]nder R.C. 2967.191, ‘[s]o long as an offender is held on a charge while awaiting trial or sentencing, the offender is entitled to jail-time credit for that sentence; a court cannot choose one of several concurrent terms against which to apply the credit.’ *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440, ¶ 22.” State conceded error.

State v. Hunter, C-200160

Court costs

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

Trial court erred in imposing postsentencing transcript costs; those costs were ordered removed from the cost statement. COA also remanded case for trial court to reconsider the postconviction transcript costs as well.

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

State v. Rodriguez, 2021-Ohio-2295

Sentencing; court-appointed-counsel fees

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2021/2021-Ohio-2295.pdf>

Trial court erred when it imposed court-appointed-counsel fees when appellant was represented at all times by privately-retained counsel; fees vacated.

State v. Stevens, 2021-Ohio-2297

Sentencing; merger

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2021/2021-Ohio-2297.pdf>

Trial court erred when it failed to merge the possession of fentanyl charge with the possession of heroin charge; appellant “cannot be separately punished for possessing in excess of 50 grams of heroin and in excess of 50 grams of fentanyl when he only possessed a total mixture of approximately 60 grams.” See *State v. Pendleton*, Slip Opinion 2020-Ohio-6833.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

State v. Anderson, 2021-Ohio-2316

Sentencing; merger

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2021/2021-Ohio-2316.pdf>

Trial court erred when it failed to merge the having weapons under disability charges which occurred on the same date at the same time; state conceded error.

State v. Midgett, 2021-Ohio-2317

Statutory speedy trial

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2021/2021-Ohio-2317.pdf>

Trial court erred when it failed to grant appellant’s motion to dismiss where “multiple charges stemmed from one investigation of one residence, which produced multiple related charges which shared a common litigation history.” Therefore, appellant “was held in jail in lieu of bail ‘on the pending charge’ pursuant to R.C. 2945.71(E).” As 96 days elapsed at the time appellant filed his motion to dismiss, he was not brought to trial within the statutory speedy-trial time limits.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

State v. Wells, 2021-Ohio-2343

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2021/2021-Ohio-2343.pdf>

Trial court erred when it ordered appellant to serve her prison sentence consecutive to the jail sentence she was already serving for a misdemeanor; R.C. 2929.41(A) provides that, except for limited offenses, a jail term for a misdemeanor shall be served concurrently with a prison term.

State v. Krankovich, 2021-Ohio-2366

Statutory speedy trial

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2021/2021-Ohio-2366.pdf>

Trial court erred when it failed to grant appellant’s motion to dismiss where the over 900-day delay in bringing appellant to trial was in clear violation of her statutory speedy trial rights; and defense counsel’s failure to respond to a discovery request which did not appear to “cause an actual delay or divert the prosecution’s attention” would not toll the time or at the most, toll the time for 30 days.

State v. Bishop, 2021-Ohio-2356

Jail-time credit

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2021/2021-Ohio-2356.pdf>

Trial court erred when it failed to grant appellant four days of jail-time credit for the time he spent in a West Virginia jail awaiting extradition for this case.

State v. Holcomb, 2021-Ohio-2352

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2021/2021-Ohio-2352.pdf>

Trial court erred when it imposed a concurrent five-year prison term for one felonious assault conviction; that count should have merged with another felonious assault count. “A concurrent sentence does not accomplish the merger of offenses.”

State v. Thomas, 2021-Ohio-2350

Burglary; degree of offense

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2021/2021-Ohio-2350.pdf>

“[T]rial court erred in entering a conviction for second-degree-felony burglary as the court failed to provide the jury with a verdict form that identified the degree of offense or additional elements . . . In accordance with the plain language of R.C. 2945.75(A)(2), a verdict merely finding Appellant ‘Guilty of Burglary’ only ‘constitutes a finding of guilty of the least degree of the offense charged.’ ”

But here is where it gets a little hinky. The COA goes on to say that the least degree of burglary is a felony of the third degree instead a felony of the fourth degree found in the (B) subsection. Here is the court’s reasoning:

“Appellant claims the least degree of burglary is a felony of the fourth degree. However, the fourth-degree felony contained in the same statute as the burglary offense is specifically designated by the legislature as the offense of ‘trespass in a habitation when a person is present or likely to be present.’ The offense charged was burglary, and a third-degree felony is the least degree of the offense legislatively designated as burglary.

I am calling hogwash on that reasoning.

State v. Jarrell, 2021-Ohio-2333

Evidence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2021/2021-Ohio-2333.pdf>

In conviction for murder of appellant’s stepmother, the trial court erred by excluding expert and lay witness testimony and evidence of the “sexual child abuse of [a]ppellant perpetrated by [his stepmother].” Such evidence would have supported a self-defense claim and as justification for a conviction for voluntary manslaughter, as opposed to murder. *See State v. Nemeth*, 82 Ohio St.3d 202, 694 N.E.2d 1332 (1998).

Eighth Appellate District of Ohio

Cleveland v. Watkins, 2021-Ohio-2275

Record sealing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-2275.pdf>

Trial court erred when it denied appellant’s applications to seal his conviction for an M-4 domestic violence and two dismissed charges of violation of a protective order without a hearing; court’s determination that appellant was not eligible was erroneous, and state conceded error.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

State v. Brown Suber, 2021-Ohio-2291

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2021/2021-Ohio-2291.pdf>

Trial court erred when it failed to provide appellant all five notifications found in R.C. 2929.19(B)(2)(c); “ ‘when sentencing an offender to a non-life felony indefinite prison term under the Reagan Tokes Law, a trial court must advise the offender of the five notifications set forth in R.C. 2929.19(B)(2)(c) at the sentencing hearing to fulfill the requirements of the statute.’ *State v. Hodgkin*, 12th Dist. Warren No. CA2020-08-048, 2021-Ohio-1353, ¶ 24.”

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.