

Appellate Court Decisions - Week of 8/30/21

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

First Appellate District of Ohio

State v. Hall, C-200264

Discovery violation

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

In conviction for domestic violence, trial court erred when it denied appellant's oral motion in limine to exclude photographs of the alleged victim's injuries which were not provided by the prosecutor until the morning of the trial; defense counsel had filed a demand for discovery which the state never answered. "Due to the trial court's failure to inquire into the circumstances of the violation, it was impossible to determine an appropriate sanction." Simply offering defense counsel a continuance, with appellant being locked up, "without engaging in the sound reasoning process provided by *Darmond*[], 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971], we find that the trial court abused its discretion."

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

State v. Hardy, 2021-Ohio-2977

Sentencing; merger

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2021/2021-Ohio-2977.pdf>

Trial court erred when it failed to merge the two counts of trafficking in heroin and trafficking in fentanyl in each of three separate controlled buys. All three buys involved a mixture of heroin and fentanyl; under the OSC's recent decision in *State v. Pendleton*, 163 Ohio St.3d 114, 2020-Ohio-6833, 168 N.E.3d 458, appellant's conduct in each of the controlled buys was "not factually capable of constitut[ing] both' the offense of trafficking in five grams but less than ten grams of heroin *and* the offense of trafficking in five grams but less than ten grams of a fentanyl-related compound. *Id.* As his 'conduct does not simultaneously constitute the two weight-based drug-trafficking offenses charged by the state, R.C. 2925.03 does not allow separate punishments to be

imposed for his conduct.’ ” *Id.*

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

State v. Gifford, 2021-Ohio-2967

Reagan Tokes; miscalculation

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2021/2021-Ohio-2967.pdf>

Trial court miscalculated appellant’s maximum prison sentence for two counts of robbery; in ordering appellant’s four-year prison terms for each count to be run consecutively, the court was correct that the minimum prison sentence under Reagan Tokes was eight years. However, the court erred in ordering the maximum sentence as 12 years instead of 10 years; “the trial court mistakenly applied the two-year sentencing tail to each stated minimum term for each offense rather than adding it to the combined stated minimum. Under R.C. 2929.144(B)(2), this is contrary to law.”

State v. Yingling, 2021-Ohio-2972

Sentencing; void v. voidable

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2021/2021-Ohio-2972.pdf>

Trial court erred in resentencing appellant to consecutive prison terms for his convictions for failure to comply and failure to appear when it had initially sentenced him to concurrent prison terms. Although trial court was correct that its original sentence was wrong, as a failure to comply prison term must run consecutive to any other prison term, that error only made sentence voidable, not void. *See State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248. As no party appealed the erroneous sentence, the trial court was without jurisdiction to resentence appellant. “[U]nless it is vacated on appeal, a voidable judgment has the force of a valid legal judgment, regardless of whether it is right or wrong.” [*State v. Henderson*, 161 Ohio St.3d 285, 2020-Ohio-4784, 162 N.E.3d 776, ¶ 43], citing *Tari v. State*, 117 Ohio St. 481, 494, 159 N.E. 594

(1927).” Appeal dismissed because resentencing was void and not a final, appealable order.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Washington, 2021-Ohio-2935

Plea

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-2935.pdf>

Appellant’s guilty plea to one count of robbery was not knowingly, intelligently, nor voluntarily made where the trial court failed to advise him of his “privilege against compulsory self-incrimination as required by Crim.R. 11(C)(2)(c).”

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

State v. Pember, 2021-Ohio-2939

Insufficient evidence; sexual battery

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2021/2021-Ohio-2939.pdf>

Appellant’s conviction for sexual battery was not supported by sufficient evidence; no witnesses testified appellant penetrated the alleged victim’s vagina nor that appellant had said he penetrated the alleged victim, K.W. In fact, K.W. testified that appellant said he had “stopped” because she was unconscious. There was also no physical evidence of penetration to corroborate any testimony. Judgment of acquittal entered for appellant.

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

State v. Vonstein, 2021-Ohio-2984

Waiver of jury trial

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2021/2021-Ohio-2984.pdf>

Appellant's conviction after a bench trial is reversed, as trial court was without jurisdiction to hold a bench trial. Trial court failed to have appellant acknowledge his jury waiver in open court; to be valid, a jury waiver must satisfy five conditions: "[i]t must be (1) in writing, (2) signed by the defendant, (3) filed, (4) made part of the record, and (5) made in open court." *State v. Lomax*, 114 Ohio St.3d 350, 2007-Ohio-4277, ¶ 9."

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.