Appellate Court Decisions - Weeks of 10/7/19 & 10/14/19

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

Nothing to report.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

***State v. Dotson*, 2019-Ohio-4045**

Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2019/2019-Ohio-4045.pdf

Trial court erred in sua sponte holding that R.C. 5120.035, which provided for Community Based Substance Disorder Treatment, was unconstitutional when neither party raised or argued the issue; and court's other reasons for denying appellant eligibility for such program was contrary to law.

Fifth Appellate District of Ohio

***State v. Devore*, 2019-Ohio-4035**

Return of seized property.

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2019/2019-Ohio-4035.pdf

As appellant had exhausted his appeals process for his convictions, state concedes that cell phone, which was the subject of appellant's motion for return of seized property, was no longer needed; appellant is entitled to return of property.

***State v. DeGarmo*, 2019-Ohio-4050**

Sentencing; allied offenses

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2019/2019-Ohio-4050.pdf

Trial court committed plain error in failing to merge two counts of gross sexual imposition, as offenses were of similar import, were committed at the same time, and were not committed with a separate animus or motivation.

***State v. Kerestes*, 2019-Ohio-4142**

Sentencing; allied offenses

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2019/2019-Ohio-4142.pdf

Trial court erred in failing to merge two counts of possession of heroin, as appellant's conduct of simultaneously possessing two containers of heroin in one location at the same time was a continuous, inseparable act.

Sixth Appellate District of Ohio

***State v. Bobbitt*, 2019-Ohio-4005**

Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2019/2019-Ohio-4005.pdf

Sentencing entry which stated that there was "up to" three years of postrelease control was incorrect, where that term was mandatory; case remanded for resentencing hearing unless appellant had completed his prison term and could no longer be resentenced.

***State v. Johnson*, 2019-Ohio-4007**

Right to Counsel

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2019/2019-Ohio-

4007.pdf

Appellant did not knowingly, voluntarily, or intelligently waive his right to counsel, as trial court failed to engage in any colloquy on the record with him "about appellant's understanding of the charges, the process, or his overall right to have counsel."

***State v. Wilson*, 2019-Ohio-4200**

Trial transcript

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2019/2019-Ohio-4200.pdf

Judgment is reversed and matter remanded where trial was not transcribed due to a hard drive failure on the first day of trial; state concedes error.

Seventh Appellate District of Ohio

***State v. Smith*, 2019-Ohio-4087**

Contempt

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2019/2019-Ohio-4087.pdf

The trial court erred in finding appellant in direct contempt for a dress code violation, as there is no evidence in the record that such violation interrupted or disrupted the court's proceedings or threatened the administration of justice.

***State v. Hill*, 2019-Ohio-4079**

Plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2019/2019-Ohio-4079.pdf

Plea was not knowingly and intelligently entered where trial court completely failed to inform appellant at his plea colloquy that he was waiving his right to a jury trial, instead using the term "public trial."

Eighth Appellate District of Ohio

***State v. Reed*, 2019-Ohio-4068**

Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-4068.pdf

Trial court erred in resentencing appellant outside his presence in violation of Crim.R. 43; in imposing sentences for counts that were merged and failing to allow the state to elect the counts on which to sentence him; in failing to notify him of the consequences of violating postrelease control; and violated R.C. 2929.03(A) by not sentencing appellant in accordance with the statutory language in that section.

***State v. Metz*, 2019-Ohio-4054**

Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-4054.pdf

As the record did not clearly and convincingly support consecutive sentences, the trial court erred in so sentencing appellants to consecutive terms. "[I]mputing each defendant's conduct to the other defendants as a ground to impose consecutive sentences [is] unfair – the defendants were not charged and tried as coconspirators; they were codefendants . . . ." Also, none of the appellants had a violent or significant criminal history to justify consecutive sentences.

Ninth Appellate District of Ohio

***State v. Fazenbaker*, 2019-Ohio-3972**

Insufficient evidence; breaking and entering

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2019/2019-Ohio-3972.pdf

Appellant's conviction for breaking and entering was not supported by sufficient evidence because the trailer at issue in the case had been covered, winterized, and placed in a storage facility; therefore, it was not an

unoccupied structure.

***State v. Wood*, 2019-Ohio-3985**

Suppression

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2019/2019-Ohio-3985.pdf

Trial court erred by denying appellant's motion to suppress, as the police officer lacked the reasonable suspicion of criminal activity necessary to prolong the traffic stop and conduct field sobriety tests; video of incident contradicted testimony of police officer and findings by trial court.

Tenth Appellate District of Ohio

***State v. Staley*, 2019-Ohio-4173**

Bindover

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2019/2019-Ohio-4173.pdf

Bindover was error, as juvenile court failed to comply with R.C. 2152.12(B)(3) by not indicating which factors it found to be applicable in favor of or against transfer; by making inconsistent findings or those not supported by the record; and by applying the incorrect standard to one factor. Case is remanded for proper amenability hearing.

Eleventh Appellate District of Ohio

***State v. Wacker*, 2019-Ohio-3997**

Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2019/2019-Ohio-3997.pdf

Trial court erred in imposing consecutive jail terms for his 2 original convictions after revoking community control; the court did not originally indicate in the initial sentencing entries that the sentences would be consecutive should appellant violate his community control.

Twelfth Appellate District of Ohio

***State v. Roberts*, 2019-Ohio-4205**

Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2019/2019-Ohio-4205.pdf

Summary from Judge Rodenberg: "The trial court erred by ordering appellant to serve 231 days in prison, with 141 days of jail-time credit, after he was found to have committed a technical violation of the conditions of his community control where R.C. 2929.15(B)(1)(c)(i) limits the trial court to a maximum 90-day prison sentence subject to a jail-time credit reduction for the confinement already served."

Supreme Court of Ohio

***State v. Hawkins*, 2019-Ohio-4210**

Suppression

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2019/2019-Ohio-4210.pdf

Summary by Supreme Court: "[W]hen an officer encounters a vehicle the whole of which is painted a different color from the color listed in the vehicle-registration records and the officer believes, based on his experience, that the vehicle or its displayed license plates may be stolen, the officer has reasonable, articulable suspicion of criminal activity and is authorized to perform an investigative traffic stop."

Stewart, J., concurs in judgment only.
Donnelly, J., dissents with an opinion.

***State v. Braden*, 2019-Ohio-4204**

Court costs

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2019/2019-Ohio-4204.pdf

On motion for reconsideration, motion is granted; R.C. 2947.23(C) authorizes trial courts to waive, suspend, or modify courts costs which were imposed either before or after its effective date of March 22, 2013.

Kennedy, J., dissents, with an opinion joined by DeWine, J.
Fisher, J., dissents, with an opinion.

***State v. Parker*, 2019-Ohio-3848**

Postconviction relief

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2019/2019-Ohio-3848.pdf

Summary by Supreme Court: "R.C. 2953.23(A) provides limited exceptions to the statutory bar on untimely or successive petitions for postconviction relief. But although the General Assembly permits a common pleas court to entertain an untimely or successive petition based on a new state or federal right recognized by the United States Supreme Court, it provided no exception allowing an untimely or successive petition to be granted based on a new decision of this court [specifically the *Hand* decision]."

DeWine, J., concurs.
French and Fischer, J.J., concur in judgment only.
O'Connor, C.J., dissents with an opinion.
Donnelly, J., dissents with an opinion.
Stewart, J., dissents with an opinion.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.