Appellate Court Decisions - Weeks of 2/22/21 & 3/1/21

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

First Appellate District of Ohio

***State v. Emanuel*, 2021-Ohio-448**

Tier classification

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2021/2021-Ohio-448.pdf

As appellant's Tier I sex offender classification was never validly imposed by the trial court because it was not included in the sentencing entry and appellant's probation has been terminated, appellant has no duty to register. The tier classification portion of the sentence for the sexual imposition conviction was voidable, not void. In accordance with *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248 and *State v. Henderson*, Slip Opinion No. 2020-Ohio-4784, the error had to be raised on direct appeal in order to be corrected. Appellant's first appeal concerned only the sufficiency and weight of the evidence, with the state not raising the sentencing error. This second appeal was based on the trial court's denial of appellant's motion to vacate/set aside his sex offender registrations. "But because the tier classification was never validly imposed, it need not be vacated or set aside. We remand this cause with instructions to the trial court to enter an order that [appellant] does not have to register as a sex offender because there is no valid order in place requiring him to register.

***State v. Brown*, C-190399**

Sufficiency; tampering with records

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

Conviction for tampering with records was not supported by sufficient evidence. Although appellant admitted to making false statements in a civil complaint for quiet title, she had an absolute privilege to make those statements. Conviction reversed and appellant discharged.

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

***State v. Crawford*, 2021-Ohio-547**

Restitution

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2021/2021-Ohio-547.pdf

Trial court erred in ordering appellant to pay restitution to the MAN Unit that expended funds for a controlled buy; "restitution is not available as a financial sanction to reimburse governmental entities that 'voluntarily advanc[e] its own funds to pursue a drug buy through an informant.' "

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

***State v. McElfresh*, 2021-Ohio-480**

Ineffective assistance of counsel

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2021/2021-Ohio-480.pdf

Trial counsel provided ineffective assistance of counsel by failing to file an affidavit of indigency to support appellant's request to waive the mandatory fine, and there was a reasonable probability the trial court would have found appellant indigent and waived the fine.

***State v. Hunt*, 2021-Ohio-528**

Post-conviction relief

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2021/2021-Ohio-528.pdf

"Trial court erred in denying appellant's petition for post-conviction relief without making findings of fact and conclusions of law as required by R.C. 2953.21." Although a trial court need not issue findings of facts and conclusions of law where the petition is untimely, appellant's petition was timely filed after considering the tolling of statutes of limitations, time limitations, and deadlines occasioned by the Ohio governor's emergency order related to COVID.

Sixth Appellate District of Ohio

***State v. T.D.*, 2021-Ohio-513**

Record sealing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2021/2021-Ohio-513.pdf

Trial court erred in denying appellant's application to seal a 2018 OVI case which was dismissed without prejudice, later refilled in 2019, and that case also dismissed, but with prejudice. Since the trial court granted the application to seal the 2019 case, it erred in not sealing the 2019 case. "The records in the 2018 case [were] 'official records' of the 2019 case and may fairly be characterized as the same case at different stages of the proceedings." *See* R.C. 2953.51(D), defining "official records."

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Maxey*, 2021-Ohio-438**

Sufficient evidence; improperly discharging a firearm at or into habitation

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-438.pdf

Two of the four convictions for improperly discharging a firearm at or into a habitation were not supported by sufficient evidence where there were only two apartments involved.

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. Turner*, 2021-Ohio-541**

Search; preservation of issue for appeal

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2021/2021-Ohio-541.pdf

On remand from OSC where Supreme Court found trial court was correct in granting appellant's motion to suppress stop and COA erred in holding otherwise; but Supreme Court asked the COA to make a determination as to whether the police officer made a "reasonable mistake of law," appellate court holds that state waived the issue by failing to raise it at the trial court level.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.