Appellate Court Decisions - Week of 4/26/21

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

First Appellate District of Ohio

***State v. Rouzier*, C-200039 & C-200040**

Sentencing; right of allocution

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

Convictions are affirmed, but case is remanded for resentencing where the trial court failed to provide appellant with his right of allocution.

Second Appellate District of Ohio

***State v. Harris*, 2021-Ohio-1431**

Withdrawal of guilty plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2021/2021-Ohio-1431.pdf

Trial court erred in denying appellant's post-sentence motion to withdraw plea without a hearing; court completely failed to advise him of the maximum possible penalty for his offense pursuant to Crim.R. 11(C)(2)(a), rendering his guilty plea not knowingly, intelligently, or voluntarily entered. Plea vacated.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

***State v. Behrle*, 2021-Ohio-1386**

Sentence

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2021/2021-Ohio-1386.pdf

For convictions for two counts of felonious assault, trial court committed plain error in sentencing appellant to both a prison term and a no contact order; no contact order is a condition of community control, and court cannot impose a prison term and a community-control sanction. *State v. Anderson*, 143 Ohio

St.3d 173, 2015-Ohio-2089, 35 N.E.3d 512.

Fifth Appellate District of Ohio

***State v. Watson*, 2021-Ohio-1361**

Sentence

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2021/2021-Ohio-1361.pdf

Trial court erred in sentencing appellant to life with parole eligibility after 38 years for two aggravated murder convictions without considering appellant's young age. *State v. Patrick*, 2020-Ohio-6803 controls even in this case where the case involved an agreed plea and sentence.

***State v. Hunter*, 2021-Ohio-1424**

Suppression; field sobriety and breath-alcohol tests

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2021/2021-Ohio-1424.pdf

Trial court erred in denying appellant's motion to suppress where the trooper lacked reasonable, articulable suspicion to conduct field sobriety and breath-alcohol tests; appellant "did not stumble or slur her words or show other signs of impairment. Trooper Kiefer observed only that her eyes were bloodshot and glassy (at approximately 3:00 a.m.), she smelled of alcohol (of an unspecified strength), and she admitted to having had one glass of wine (approximately seven hours earlier)." These observations were not enough to warrant administering the tests.

Sixth Appellate District of Ohio

***State v. Wilson*, 2021-Ohio-1444**

Sufficiency; violation of protection order and lack of service and knowledge

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2021/2021-Ohio-1444.pdf

City presented insufficient evidence to support conviction of violation of protective order; the order was not served upon appellant and there was insufficient evidence presented that appellant had constructive knowledge of the order. Conviction vacated and appellant discharged.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Zsigray*, 2021-Ohio-1401**

Fine; indigency

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-1401.pdf

Trial court erred in ordering appellant to pay a mandatory fine despite appellant having filed a poverty affidavit, and the record demonstrating that he was indigent and had no present or future ability to pay such fine. Imposition of fine vacated.

***State v. Merriman*, 2021-Ohio-1403**

Sufficiency; Retaliation

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-1403.pdf

Conviction for four counts of retaliation was not supported by sufficient evidence; appellant was in the midst of a mental-health crisis, and he "confided and made the statements to therapists and treating physicians for treatment purposes."

***"See State v. Farthing*, 146 Ohio App.3d 720, 725, 2001-Ohio-7077, 767 N.E.2d 1242 (statements made to mental health counselor, which warranted safety concerns for the targeted victim, did not stem from a 'threat of harm' expressed by the defendant for purposes of retaliation). To provide otherwise, would increase the risk a mental health patient poses to the public by discouraging them from seeking treatment for fear of being prosecuted for their unhealthy thoughts and feelings. There was no non-hearsay evidence presented at trial that defendant stated any intention or plan to harm these people."**

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

Nothing to report.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.