Appellate Court Decisions - Week of 5/17/21

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

First Appellate District of Ohio

***State v. Davis*, 2020-Ohio-1693**

Ineffective assistance of counsel

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2020/2020-Ohio-1693.pdf

In convictions for aggravated vehicular homicide, trial counsel provided ineffective assistance of counsel by withdrawing his objection to the state's failure to provide an expert report for its accident reconstructionist witness; case remanded for a new trial. *See State v. Boaston*, 160 Ohio St.3d 46, 2020-Ohio-1061, 153 N.E.3d 44, ¶ 1 (holding that "it is error to admit expert-opinion testimony when the expert's opinion was not set forth in a written report prepared in compliance with Crim.R. 16(K)."); *State v. Hall*, 1st Dist. Hamilton Nos. C-170699 and C-170700, 2019-Ohio-2985, ¶ 20 (explaining that the trial court erred by allowing "expert opinions submitted without a report").

Second Appellate District of Ohio

***State v. Nicholas*, 2021-Ohio-1669**

Court costs and appointed counsel fees

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2021/2021-Ohio-1669.pdf

On remand from COA which had ordered trial court to direct the clerk of courts to separate appointed counsel fees, which must be entered as a separate civil judgment, from court costs, trial court again erred in refusing to follow remand directive and not removing counsel fees from the court cost bill. Case is again remanded, ordering the trial court to direct the clerk of courts to remove the appointed counsel fees from the cost bill.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Jackson*, 2021-Ohio-1660**

Interstate Agreement on Detainers ("IAD")

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-1660.pdf

Trial court erred in refusing to dismiss where the state failed to bring him to trial within 180 days as required by the IAD, R.C. 2963.30; appellant "substantially complied with the IAD. He presented the notice of his incarceration in Florida and a request for a final disposition to the warden of the Okaloosa Correctional Institution on August 21, 2018. The Okaloosa Correctional Institution then sent the notice and request to the Cuyahoga County Prosecutor's Office. The request was filed with the clerk's office. . . [t]he failure of the correctional facility to also provide the certificate in compliance with Article III(a) and (b) was not the fault of appellant—he did everything that could be reasonably expected." Also, state's argument that appellant was not prejudiced is irrelevant, as "a defendant need not demonstrate prejudice arising as a result of his delayed trial." The statute is mandatory that the case must be dismissed if the trial is not commenced within 180 days.

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. Brasher*, 2021-Ohio-1688**

Restitution; Marsy's Law

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2021/2021-Ohio-1688.pdf

Trial court erred in amending appellant's sentence by imposing restitution after appellant had already completed his entire 18-month sentence; pursuant to *State v. Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, 1 N.E.3d 382, the trial court lost jurisdiction to modify appellant's sentence.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

***Edwards v. Vannoy*, 593 U.S. ____ (2021)**

Retroactivity

Full Decision:
https://www.supremecourt.gov/opinions/19pdf/19-5807_new2_jhe.pdf

***Held:* The Ramos jury-unanimity rule does not apply retroactively on federal collateral review. Pp. 5–20.**

(a) A new rule of criminal procedure applies to cases on *direct* re-view, even if the defendant's trial has already concluded. But the Court has stated that new rules of criminal procedure ordinarily do not apply retroactively on federal *collateral* review. The Court has stated that a new procedural rule will apply retroactively on federal collateral review only if the new rule constitutes a "watershed" rule of criminal procedure. *Teague* v. *Lane*, 489 U. S. 288, 311 (plurality opinion). When the *Teague* Court first articulated that "watershed"

exception, however, the Court stated that it was "unlikely" that such watershed "components of basic due process have yet to emerge." *Id.*, at 313. And in the 32 years since *Teague*, the Court has *never* found that any new procedural rule actually satisfies the purported exception. Pp. 5–7.

(b) To determine whether *Ramos* applies retroactively on federal collateral review, the Court must first ask whether *Ramos* announced a new rule of criminal procedure and, if so, whether that rule falls within an exception for watershed rules of criminal procedure that apply retroactively on federal collateral review. The Court concludes that *Ramos* announced a new rule and that the jury-unanimity rule announced by *Ramos* does not apply retroactively on federal collateral review. Pp. 8–14.

(1) The *Ramos* jury-unanimity rule is new because it was not "*dictated* by precedent existing at the time the defendant's conviction became final," *Teague*, 489 U. S., at 301, or "apparent to all reasonable jurists" at that time, *Lambrix* v. *Singletary*, 520 U. S. 518, 528. On the contrary, before *Ramos*, many courts interpreted *Apodaca* to allow for non-unanimous jury verdicts in state criminal trials. And the *Ramos* Court expressly repudiated *Apodaca*. Pp. 8–10.

(2) The new rule announced in *Ramos* does not qualify as a "watershed" procedural rule that applies retroactively on federal collateral review. In an attempt to distinguish *Ramos* from the long line of cases where the Court has declined to retroactively apply new procedural rules, Edwards emphasizes three aspects of *Ramos*: (i) the significance of the jury-unanimity right; (ii) *Ramos*'s reliance on the original meaning of the Constitution; and (iii) the effect of *Ramos* in preventing racial discrimination in the jury process. But the Court has refused to retroactively apply other momentous cases with similar attributes. In *DeStefano* v. *Woods*, 392 U. S. 631, the Court declined to retroactively apply *Duncan* v. *Louisiana*, 395 U. S. 145, even though *Duncan* established the jury right itself. In *Whorton* v. *Bockting*, 549 U. S. 406, the Court declined to retroactively apply *Crawford* v. *Washington*, 541 U. S. 36, even though *Crawford* relied on the original meaning of the Sixth Amendment to restrict the use of hearsay evidence against criminal defendants. And in *Allen* v. *Hardy*, 478 U. S. 255 (*per curiam*),the Court declined to retroactively apply *Batson* v. *Kentucky*, 476 U. S. 79, even though *Batson* held that state prosecutors may not discriminate on the basis of race when exercising individual peremptory challenges. There is no good rationale for treating *Ramos* differently from *Duncan*, *Crawford*, and *Batson*. Pp. 10–14.

(3) Given the Court's numerous precedents holding that landmark and historic decisions announcing new rules of criminal procedure do not apply retroactively on federal collateral review, the Court acknowledges that the watershed exception is moribund and that no new rules of criminal procedure can satisfy the purported exception for watershed rules. Continuing to articulate a theoretical exception that never actually applies in practice offers false hope to defendants, distorts the law, misleads judges, and wastes the resources of

defense counsel, prosecutors, and courts. Moreover, no one can reasonably rely on an exception that is non-existent in practice, so no reliance interests can be affected by forthrightly acknowledging reality. The watershed exception must "be regarded as retaining no vitality." *Herrera* v. *Wyoming*, 587 U. S. ____, ____ (slip op., at 11) (internal quotation marks omitted). Pp. 14–15.

Affirmed.

KAVANAUGH, J., delivered the opinion of the Court, in which ROBERTS, C. J., THOMAS, ALITO, GORSUCH, and BARRETT, JJ., joined. THOMAS, J., filed a concurring opinion, in which GORSUCH, J., joined. GORSUCH, J., filed a concurring opinion, in which THOMAS, J., joined. KAGAN, J., filed a dissenting opinion, in which BREYER and SOTOMAYOR, JJ., joined.