Appellate Court Decisions - Week of 6/14/21

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

***State v. Maston*, 2021-Ohio-1975**

Appointed counsel fees

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2021/2021-Ohio-1975.pdf

Trial court erred in assessing appointed counsel fees as part of appellant's criminal sentence, as these are a civil assessment and not part of the sentence. *State v.* Taylor, Slip Opinion No. 2020-Ohio-6786.

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. Sealey*, 2021-Ohio-1949**

Reagan Tokes

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-1949.pdf

In state's appeal, trial court did not err in finding the Reagan Tokes Act unconstitutional; COA holds that Reagan Tokes Act violates procedural due process.

***State v. Daniel*, 2021-Ohio-1963**

Reagan Tokes; no-contact order

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-1963.pdf

COA hold the Reagan Tokes Act unconstitutional, as it violates procedural due process. Trial court also erred when it imposed the community-control sanction of a no-contact order; as appellant was sent to prison, a court cannot impose a prison term and a community-control sanction for the same offense. *State v. Anderson*, 143 Ohio St.3d 173, 2015-Ohio-2089, 35 N.E.3d 512, ¶ 32.

***Parma v. Ritondaro*, 2021-Ohio-1961**

Insufficient evidence; impersonating an officer

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-1961.pdf

City failed to presented sufficient evidence to support conviction for impersonating an officer. Appellant did not display his badge and ID for purposes of R.C. 2921.51 where he simply presented his wallet to the arresting officer; and the badge and ID had been properly issued to him by the Garfield Heights Police Department for which he worked. COA could not "conclude that appellant purposely engaged in fraudulent conduct or purposely misled Officer Schuld." Conviction vacated and appellant discharged.

Ninth Appellate District of Ohio

***State v. Hickman*, 2021-Ohio-1981**

Nonsupport

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2021/2021-Ohio-1981.pdf

Trial court erred in denying appellant's motion to dismiss indictment for nonsupport where basis of denial was court's assessment that issue of constitutionality of nonsupport statute as applied to appellant could not be determined at the motion to dismiss phase; trial court only needed to examine when appellant's nonsupport order terminated to determine constitutionality of R.C. 2919.21, as amended. Case remanded so "the trial court should resolve the issues set forth in [appellant's] motion to dismiss."

***State v. Briggs*, 2021-Ohio-1980**

Right to counsel

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2021/2021-Ohio-1980.pdf

Appellant's waiver of his Sixth Amendment right to counsel was not knowingly, voluntarily, and intelligently made; therefore, appellant's conviction for trespass is affirmed, but case remanded to the trial court to immediately vacate appellant's 30-day jail sentence.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

***State v. Roll*, 2021-Ohio-1989**

Consecutive sentences

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2021/2021-Ohio-1989.pdf

Trial court erred in imposing consecutive sentences without making the findings required by R.C. 2929.14(C)(4).

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

***Terry v. United States*, 593 U.S. ____ (2021)**

Sentencing; First Step Act

Full Decision:
https://www.supremecourt.gov/opinions/20pdf/20-5904_i4dk.pdf

***Held:* A crack offender is eligible for a sentence reduction under the First Step Act only if convicted of a crack offense that triggered a mandatory minimum sentence. The First Step Act makes an offender eligible fora sentence reduction only if the offender previously received "a sentence for a covered offense." §404(b), 132 Stat. 5222. The Act defines " 'covered offense' " as "a violation of a Federal criminal statute, the statutory penalties for which were modified by" certain provisions in the Fair Sentencing Act. §404(a), *ibid*. The Fair Sentencing Act modified the statutory penalties for offenses that triggered mandatory minimum penalties because a person charged with the same conduct today no longer would face the same statutory penalties that they would have faced before 2010. For example, a person charged with knowing or intentional possession with intent to distribute at least 50grams of crack was subject to a 10-year mandatory minimum before 2010. Now, he would be subject only to a 5-year mandatory minimum. But the Fair Sentencing Act did not modify the statutory penalties for petitioner's offense. Before 2010, a person charged with petitioner's offense—knowing or intentional possession with intent to distribute an unspecified amount of a schedule I or II drug—was subject to statutory penalties of imprisonment of 0-to-20 years and up to a $1 million fine, or both, and a period of supervised release. After 2010, a person charged with this conduct is subject to the exact same statutory penalties. Petitioner thus is not eligible for a sentence reduction. Pp. 5– 8.**

828 Fed. Appx. 563, affirmed.

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

***Borden v. United States*, 593 U.S. ____ (2021)**

Violent felony

Full Decision:
https://www.supremecourt.gov/opinions/20pdf/19-5410_8nj9.pdf

Held: **Offense of reckless aggravated assault is not a violent felony under the Armed Criminal Career Act ("ACCA") because that offense requires only a *mens* rea of recklessness; a reckless offense cannot qualify as a violent felony where only purposeful or knowing conduct satisfies the ACCA's demand for the use of force against the person of another.**

769 Fed. Appx. 266, reversed and remanded.

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