Appellate Court Decisions - Week of 9/23/19

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

First Appellate District of Ohio

***State v. Beasley*, C-180152**

Suppression

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

This case has a long history. In 2014, appellant was arrested for possession of cocaine; she filed a motion to suppress the search of her vehicle that was denied by the trial court. She then attempted to plead no contest to preserve the suppression issue for appeal, but the trial court had a blanket policy of not accepting no contest pleas. The case eventually made its way to the Ohio Supreme Court which reversed and remanded the case, finding the blanket policy was improper. The case came back to the trial court who then accepted the no contest plea. Finally, appellant was able to appeal the denial of her motion to suppress. The First District agreed with appellant that the trial court erred in finding that the evidence seized was pursuant to a proper inventory search; no evidence was presented regarding the policy the police officer was relying upon when searching appellant's automobile. Case reversed and remanded.

***State v. Cannon*, C-180474**

New trial

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

The trial court erred in failing to hold an evidentiary hearing on appellant's Crim.R. 33(B) motion for leave to file a motion for a new trial based on newly discovered evidence.

Second Appellate District of Ohio

Nothing to report.

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

***State v. Diehl*, 2019-Ohio-3818**

Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2019/2019-Ohio-3818.pdf

The "trial court at the original sentencing hearing did not make any of the required findings to impose consecutive prison terms as a penalty for the violations of the multiple community control sanctions and, therefore, the notice of the specific prison term was contrary to law to this extent. Therefore, the trial court could not impose consecutive prison terms for the later violations of the community control sanctions." The appellate court also certified a conflict to the Ohio Supreme Court as to the proper standard of review of a sentence imposing a penalty for the violation of a community control sanction.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***Cleveland v. Pentagon Realty, L.L.C.*, 2019-Ohio-3775**

Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-3775.pdf

Summary from the Eighth District: the trial court abused its discretion in ordering [appellant] to provide tax returns from 2015, 2016, and 2017, as well as its monthly bank statements . . . these additional community control conditions bear no reasonable relation to appellant's convictions for failure

to comply with the building codes.

***Cleveland v. U.S. Bank Natl. Assn.*, 2019-Ohio-3776**

Sentencing

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-3776.pdf

In conviction for city building code violations, the trial court erred by imposing community control sanctions on appellant bank for properties it did not own in its corporate capacity and for properties outside the court's jurisdiction.

***State v. Nix*, 2019-Ohio-3886**

Plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-3886.pdf

Appellant's guilty plea for theft case was not knowing, intelligent, or voluntary because the trial court failed to inform him that any sentence he received for a violation of his community control pursuant to R.C. 2929.141 was required to be served consecutively to the sentence imposed in the theft case.

***State v. Kirk*, 2019-Ohio-3887**

Batson

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-3887.pdf

Trial court erred in denying appellant's *Batson* challenge to the state's use of 4 of its 7 peremptory challenges on prospective African-American jurors without presenting proper racially neutral reasons for such exclusion.

***State v. Hawkins*, 2019-Ohio-3889**

Ineffective assistance of counsel

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

3889.pdf

Trial counsel was ineffective for failing to file a motion to dismiss for the state's failure to commence the criminal action within the statute of limitations contained in R.C. 2901.13, and the state failed to exercise reasonable diligence when serving the summons on appellant.

Ninth Appellate District of Ohio

***State v. Cox*, 2019-Ohio-3822**

Forfeiture

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2019/2019-Ohio-3822.pdf

The trial court erred in ordering forfeiture of funds as proceeds from illegal gambling when the state repeatedly maintained that the money was subject to forfeiture because it was an instrumentality of a drug offense; "[a]n instrumentality is not the same as proceeds." Remanded for new forfeiture hearing.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

***State v. Montgomery*, 2019-Ohio-3840**

Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2019/2019-Ohio-3840.pdf

"[T]he trial court erred by imposing a community control 'sentencing package' at his initial sentencing, rather than individually on each charge, which thereby invalidate[d] the imposition of a prison sentence for [appellant's] community control violation." Original community control sentence was void; therefore, trial court could not find that appellant violated his community control; remanded for de novo sentencing.

Twelfth Appellate District of Ohio

***State v. Montgomery*, 2019-Ohio-3831**

Insufficient evidence; domestic violence

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2019/2019-Ohio-3831.pdf

In conviction for domestic violence, the state failed to present any evidence that the alleged victim, appellant's brother, was or had ever resided with appellant. Conviction vacated and appellant discharged.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.