Appellate Court Decisions - Week of 9/9/19

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

First Appellate District of Ohio

***State v. Sow*, 2019-Ohio-3641**

Reopening

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2019/2019-Ohio-3641.pdf

In re-opened appeal pursuant to App.R. 26(B), appellate counsel was ineffective for failing to challenge imposition of concurrent sentences that should have been merged as allied (aggravated vehicular assault and vehicular assault); and trial court erred in imposing a lifetime driver's license suspension where suspension range was 2-10 years.

***State v. Smith*, 2019-Ohio-3642**

Withdrawal of plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2019/2019-Ohio-3642.pdf

Trial court erred in denying appellant's motion to withdraw plea pursuant to Crim.R. 32.1 without an evidentiary hearing where motion was supported by affidavits of defendant and trial counsel which, if accepted by the trial court as true, would require that appellant be allowed to withdraw his plea; affidavits stated that trial counsel's "drug addiction had rendered him incapable of functioning as the counsel guaranteed under the Sixth Amendment."

***State v. Reese*, C-180126 & C-180412**

Appointed counsel fees

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

Trial court erred in imposing appointed counsel fees, as it had no authority to tax these fees as costs, but may only enter a separate civil judgment for such fees; and further, it erred when it failed to make a determination as to appellant's current or future ability to pay.

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. Wells*, 2019-Ohio-3605**

Suppression

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2019/2019-Ohio-3605.pdf

After mandatory bindover of juvenile and jury trial, trial court erred in failing to transfer case back to juvenile court as reverse bindover under R.C. 2152.121; juvenile was convicted solely of aggravated robbery without a finding that he had a firearm which mandated a remand to the juvenile court.

***State v. Kiser*, 2019-Ohio-3603**

Fine

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2019/2019-Ohio-3603.pdf

Summary from the Sixth District: "Because the trial court lacked statutory authority to modify appellant's November 6, 2015 sentence, and because any error in that sentence was not brought before the trial court on direct appeal or collateral attack, we find the trial court erred in imposing a $10,000 fine on appellant following its previous judgment being affirmed

on appeal."

Seventh Appellate District of Ohio

***State v. Wells*, 2019-Ohio-3585**

Sex offense

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2019/2019-Ohio-3585.pdf

Conviction for attempted gross sexual imposition was not supported by sufficient evidence; after appellant advised victim to look and then exposed his penis, he made no further advances nor took any substantial steps toward having sexual contact with the victim.

Eighth Appellate District of Ohio

***State v. Moore*, 2019-Ohio-3657**

Plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-3657.pdf

State concedes that trial court erred by failing to advise appellant of his rights pursuant to Crim.R. 11, rendering his guilty pleas not knowingly and intelligently made; convictions vacated and remanded.

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

***United State v. Ligon*, No. 18-4234**

Breach of plea agreement

Full Decision:
http://www.opn.ca6.uscourts.gov/opinions.pdf/19a0236p-06.pdf

Because the government breached the plea agreement by arguing for a higher sentence than contemplated in the agreement, appellant was entitled to resentencing before a different district judge.

Supreme Court of the United States

Nothing to report.