Appellate Court Decisions - Weeks of 2/23/22 – 3/7/22

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

First Appellate District of Ohio

***State v. Beauchamp*, C-210340**

Sentencing; no-contact order

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

In conviction for criminal damaging, trial court erred in imposing both a 15-day jail sentence and a no-contact order. A no-contact order is a condition of community control, and appellant was not placed on community control. A trial court can either impose community control or incarceration, but not both. *See State v. Anderson*, 143 Ohio St.3d 173, 2015-Ohio-2089, 35 N.E.3d 512.

***In re J.P.*, 2022-Ohio-539**

Serious Youthful Offender specification

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2022/2022-Ohio-539.pdf

In state's appeal, in adjudication as delinquent of murder, juvenile court did not err in dismissing the serious youthful offender specification. The initial complaint did not request a serious youthful offender dispositional sentence; nor did the state file a written notice of its intent to seek such a sentence within 20 days of the date of appellant's first hearing as required by R.C. 2152.13(A). The state also failed to obtain an indictment charging appellant as a serious youthful offender within the 20-day window as required by R.C. 2152.13(A)(4). COA also found that dismissal of the SYO specification was a final, appealable order under R.C. 2505.02(B)(4).

***State v. Mughni*, 2022-Ohio-626**

Constitutional speedy trial

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2022/2022-Ohio-626.pdf

In state's appeal, trial court did not err in granting appellant's motion to dismiss for violation of appellant's constitutional speedy trial rights. An eight-and-a-half month delay was "sufficient to trigger the remainder of the [*Barker v. Wingo*,

407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972)] analysis." As for the second *Barker* factor, the state's explanation for the delay, the state conceded that the police made no effort "track down" appellant. Appellant timely invoked his right to a speedy trial so this weighed in favor of appellant under the third *Barker* factor. Finally, as for the fourth *Barker* factor, prejudice, the COA found prejudice due to the city's destruction of body-camera footage, "which potentially impaired [appellant's] defense . . . ."

Second Appellate District of Ohio

***State v. Clay*, 2022-Ohio-631**

Plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2022/2022-Ohio-631.pdf

Trial court erred when it accepted appellant's no contest plea, but completely failed to inform him of the effect of his plea as required by Crim.R. 11(E). Plea vacated as not being knowingly, intelligently, or voluntarily made; and prejudice need not be shown.

***State v. Daly*, 2022-Ohio-632**

Complaint

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2022/2022-Ohio-632.pdf

On remand from COA where the court had agreed that the complaint had not been properly signed and sworn in accordance with Crim.R. 3, but remanded to determine if a separate affidavit existed which had been referenced in the trial transcripts, the trial court erred when it failed to comply with and went beyond the mandate of the COA. The trial court never addressed whether the original complaint was properly sworn; instead, it allowed the state to amend the complaint under Crim.R. 7(D) to include the proper certification that the complaint had been sworn. But "the lack of an executed jurat [does not] constitute[] a 'defect, imperfection, or omission' that may be remedied by way of a Crim.R. 7(D) motion. While not expressly stated, Crim.R. 7(D) necessarily presupposes the existence of a valid complaint that properly invokes the municipal court's jurisdiction. This interpretation is consistent with the principle that subject matter jurisdiction cannot be waived or forfeited and can be raised at any time." As the defect in the complaint was a jurisdictional defect, the issue of prejudice to appellant was irrelevant. Case ordered dismissed.

Third Appellate District of Ohio

***State v. Eitzman*, 2022-Ohio-574**

Earned days of credit

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2022/2022-Ohio-574.pdf

Trial court erred when it stated in its sentencing entry that appellant was not eligible for earned days of credit pursuant to R.C. 2967.193. "While [appellant] does not meet the eligibility requirements for earned credit under R.C. 2967.193(A)(2) [because he was convicted of an offense of violence], he is not statutorily ineligible for earned credit under R.C. 2967.193(A)(1)."

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

***State v. Young*, 2022-Ohio-593**

Record sealing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2022/2022-Ohio-593.pdf

Trial court erred when it denied appellant's application to seal his record of conviction for attempted drug abuse, as he was an eligible offender under R.C. 2953.31(A)(1). Although appellant was arrested for an OVI at the same time as the drug case, the two separate charges brought in two separate jurisdiction which proceeded separately, also were not based on the same set of facts. The OVI charge arose out of appellant driving a vehicle under the influence or over the legal limit; the drug charge arose out of appellant's possession of drugs.

Sixth Appellate District of Ohio

***State v. Reaper*, 2022-Ohio-555**

Plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2022/2022-Ohio-555.pdf

Trial court erred when it accepted appellant's plea, but completely failed to inform him that his plea would result in a sexual offender classification as required by Crim.R. 11(D). Plea vacated as not being knowingly, intelligently, or voluntarily made.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***Euclid v. Hedge*, 2022-Ohio-464**

Right to counsel

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-464.pdf

"[A]lthough the municipal court advised [appellant] of her right to counsel, the charge against her, and the penalties if she were convicted, the municipal court did not confirm whether [appellant] understood her right to counsel . . . in this and subsequent colloquies, the municipal court did not advise [appellant] of the dangers and disadvantages of self-representation, the possible defenses available to her, or any mitigating circumstances. Nor did the court investigate if [appellant] was equipped to proceed with self-representation. Without these advisements, [appellant's] waiver was not knowing, intelligent, or voluntary." *See State v. Martin,* 103 Ohio St.3d 385, 2004-Ohio-5471, 816 N.E.2d 227. Conviction vacated and case remanded for a new trial – although COA recognized that some districts and even some other panels within the Eighth District only vacated the jail sentence and community control sanctions when finding no valid waiver of counsel.

***State v. Johnson*, 2022-Ohio-523**

New trial

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-523.pdf

Trial court erred when it denied appellant's motion for leave to file a motion for a new trial, as his motion "show[s] by clear and convincing evidence that he was unavoidably prevented from timely filing his motion for a new trial." Another person had confessed to committing the aggravated robberies for which appellant was convicted after his trial so that he was prevented from discovering that confession. Also, the COA was mindful of the loss of evidence by the state and police, the "inexplicable break in the chain of custody of critical physical

evidence, despite court-ordered DNA testing of that evidence, and through no fault of [appellant which] is an essential aspect of this case that we cannot ignore."

***State v. Moore*, 2022-Ohio-522**

Ineffective assistance of counsel

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-522.pdf

Trial counsel provided ineffective assistance of counsel by failing to raise the issue of the statute of limitations. Although a John Doe-DNA indictment for rape was filed eight days before the 20-year statute of limitations expired, that type of indictment tolls the statute of limitation only "when the suspect is unknown, or where the only way to ascertain the identity of the suspect is DNA comparison." In this case, the COA determined the state had enough information on appellant to determine his identity, yet waited to identify him until three years after the statute of limitation expired via a DNA match. The state did not meet its burden that it "behaved with reasonable diligence" in identifying appellant. And even though appellant had pled guilty, he would not have pled but for his trial counsel's ineffectiveness in failing to file a motion to dismiss.

***In re A.M.*, 2022-Ohio-612**

Allied offenses

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-612.pdf

Juvenile court erred in failing to merge two counts of GSI and one count of sexual imposition as allied offenses of similar import, where the offenses arose out of a single incident. State conceded error.

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. Smith*, 2022-Ohio-564**

Jail-time credit

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2022/2022-Ohio-564.pdf

State concedes that trial court erred in only awarding jail-time credit of 148 days to appellant, where the correct number was 230 days.

***State v. Burden*, 2022-Ohio-569**

Jail-time credit

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2022/2022-Ohio-569.pdf

As the record did not contain sufficient information to determine if the trial court erred in only awarding jail-time credit of 86 days to appellant because there might have been potential credit for the time appellant was incarcerated in Kentucky awaiting extradition to Ohio, case remanded to determine correct number of days of credit.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.