

## Appellate Court Decisions - Week of 3/28/22

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

### First Appellate District of Ohio

#### **State v. R.S., C-210169-173**

Record sealing

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

**Trial court erred in denying appellant's applications to seal her criminal convictions. First, the court erroneously found that her drug possession conviction was ineligible for sealing. Second, the trial court abused its discretion because appellant had "demonstrated rehabilitation and identified a significant interest in sealing her records" which was not outweighed by the state's interests. Case remanded with instructions to seal the records.**

#### **State v. Collins, C-210302**

Incompetency

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

**Trial court erred in finding appellant incompetent "because the Court Clinic report on competency relied on by the court was not properly admitted into evidence, and therefore, there was not sufficient evidence to overcome the presumption of competence. . . [a]bsent a stipulation, the author of the report was required to testify in order for the report to be admitted. See R.C. 2317.36".**

#### **State v. Harris, C-210391**

Plea

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

**Appellant's guilty plea was not knowingly and voluntarily made where the trial court failed to advise him of his right to confrontation, thereby failing to comply with Crim.R. 11.**

### Second Appellate District of Ohio

#### **State v. Searls, 2022-Ohio-858**

## Sentencing; Reagan Tokes and jail-time credit

### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2022/2022-Ohio-858.pdf>

Trial court erroneously stated jail-time credit as 229 days, when it should have credited appellant with 236 days. Trial court also erred in failing to clarify that the individual eight-year terms for three counts of pandering obscenity involving a minor were minimum terms of an indefinite sentence under the Reagan Tokes Act, rather than definite eight-year terms. Case remanded for trial court to correct sentencing entry.

## Third Appellate District of Ohio

### **State v. Abston, 2022-Ohio-884**

#### Forfeiture

### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2022/2022-Ohio-858.pdf>

Trial court erred in ordering forfeiture of \$13,680 in the absence of a forfeiture specification in the indictment. “Money derived from a drug transaction can constitute ‘proceeds.’ See *State v. McCorkle*, 2d Dist. Greene No. 2020-CA-36, 2021-Ohio-2604, ¶ 15, *appeal not allowed*, 165 Ohio St.3d 1426, 2021-Ohio-3730, ¶ 15. However, in order for such ‘proceeds’ to be forfeited, a defendant has to be convicted of a crime *and* a forfeiture specification ‘of the type described in section 2941.1417’ has to be included in the indictment. R.C. 2981.04(A)(1).”

## Fourth Appellate District of Ohio

*Nothing to report.*

## Fifth Appellate District of Ohio

### **State v. Robertson, 2022-Ohio-905**

#### Sufficiency; grand theft of a motor vehicle

### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2022/2022-Ohio-905.pdf>

State failed to present sufficient evidence to establish that appellant’s use of the motor vehicle was without the owners’ consent where they did not testify that they did not give permission for appellant to drive the vehicle.

## Sixth Appellate District of Ohio

### ***State v. Chears, 2022-Ohio-861***

Sentencing; firearm specifications

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2022/2022-Ohio-861.pdf>

In state's cross-appeal, trial court did not err when it found appellant guilty of both a one-year and three-year firearm specification, but chose to sentence appellant to the one-year specification. "R.C. 2941.145(B) is unambiguous in its anticipation that while an offender could be concurrently convicted of more than one of the array of firearm sentencing enhancements under R.C. 2929.14(B)(1)(a)(i) to (vi) for the same underlying offense, a trial court may only select one sentence enhancement to the preclusion of all others. Contrary to the prosecution's urging, the statute does not state that the three-year sentence enhancement automatically subsumes all lesser duration sentence enhancements, i.e. one year and eighteen months, leaving the trial court no discretion to select among the applicable options." (Emphasis added.)

## Seventh Appellate District of Ohio

### ***State v. Crook, 2022-Ohio-896***

Plea; PRC sentence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2022/2022-Ohio-896.pdf>

"Appellant's guilty plea was not knowingly, intelligently, and voluntarily made as he probably would not have pled guilty" had he known that the trial court was going to sentence him to an additional, consecutive 1,416 days for a PRC violation on a prior case.

## Eighth Appellate District of Ohio

### ***State v. Gray, 2022-Ohio-939***

Sentencing; PRC

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-939.pdf>

In state's appeal after conviction and sentence for WUD, trial court erred in sentencing appellant to a definite three-year term of PRC because under

amended R.C. 2967.28, effective September 30, 2021, “an offender who is convicted of a third-degree felony that is neither a violent offense nor a felony sex offense is subject to a discretionary period of postrelease control of up to two years to be imposed by the parole board, not the court.” Further, “[t]he trial court also erred when it did not inform [appellant] at the sentencing hearing and in its accompanying sentencing entry whether the postrelease control was discretionary or mandatory and did not advise [appellant] of the consequences of violating the conditions of postrelease control.”

## Ninth Appellate District of Ohio

**State v. Tancak, 2022-Ohio-880**

Plea

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2022/2022-Ohio-880.pdf>

Appellant’s guilty plea was not knowingly, voluntarily, or intelligently made where the trial court failed to advise him “there was a statutory requirement that any sentence imposed for failure to comply with an order or signal of a police officer would be served consecutively, and not concurrently, with any other sentence imposed.”

## Tenth Appellate District of Ohio

*Nothing to report.*

## Eleventh Appellate District of Ohio

**State v. Ferrell, 2022-Ohio-890**

Sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2022/2022-Ohio-890.pdf>

In third appeal after case sent back to make consecutive sentence findings, trial court erred in increasing appellant’s sentence on four counts of nonsupport from one year on each count, consecutive, to 18 months on each count, consecutive. After second appeal, COA found the trial court had not rebutted the presumption of vindictiveness that would justify the increased sentences. The case was sent back with instructions that the trial court make findings to justify the increased sentence. As the trial court again did not provide reasons for the

increased sentences, the COA modified the sentences to the original total four-year term.

### ***State v. Torres, 2022-Ohio-889***

Right to counsel

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2022/2022-Ohio-889.pdf>

Trial court plainly erred by failing to provide [appellant] any opportunity to consult with his appointed defense counsel prior to revoking his community control and sentencing him to consecutive prison terms.

### **Twelfth Appellate District of Ohio**

#### ***State v. Hollie, 2022-Ohio-872***

Reverse bindover

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2022/2022-Ohio-872.pdf>

After juvenile/appellant was bound over to adult court, he pled guilty to aggravated robbery without a firearm specification; based on this plea, he was eligible for a reverse bindover. Thereafter, the state objected. The juvenile court then erred when it failed to hold an amenability hearing as required by R.C. 2152.121.

### **Supreme Court of Ohio**

*Nothing to report.*

### **Sixth Circuit Court of Appeals**

*Nothing to report.*

### **Supreme Court of the United States**

*Nothing to report.*