

## Appellate Court Decisions –Week of 5/23/22

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

### First Appellate District of Ohio

#### **State v. Barnes, 2022-Ohio-1738**

Sentencing; jail-time credit; no-contact order

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2022/2022-Ohio-1738.pdf>

In convictions in four separate cases, although appellant’s aggregate jail term of 540 days did not exceed 548 days (18 months), his suspended jail term on one of the cases is limited to eight days. And as trial court erred in failing to credit appellant with an additional 14 days, there is no longer any days left to serve on the suspended jail term. Also, trial court erred in ordering appellant to stay away from the PW in cases where appellant was given a jail term and was not placed on community control; a no-contact order is a condition of community control, and since “the trial court imposed incarceration\* \* \*[it] was not authorized to impose a community-control sanction.”

#### **State v. Johnson, C-210381**

Postconviction relief; res judicata

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

“Because [appellant] submitted cogent evidence outside the record to support his postconviction claims, we hold that res judicata does not operate to bar his claims. Further, our review of the record convinces us that [appellant]’s petition, at least on its face, sets forth substantive grounds for relief.” Case remanded for a hearing on the merits of appellant’s petition.

#### **State v. Schilling, C-210363**

Sex offender classification; void v. voidable

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

In 2008 conviction for attempted voyeurism in Hamilton County Municipal Court of appellant, a Kentucky resident, where offense was committed in 2007 before the effective date of the Adam Walsh Act (“AWA”), trial court erred in classifying appellant as a Tier I sex offender when he should have been a Megan’s Law sex offender. However, this classification was never appealed;

under *State v. Henderson*, 161 Ohio St.3d 285, 2020-Ohio-4784, 162 N.E.3d 776, that classification, being voidable instead of void, cannot now be corrected. Therefore, appellant's motion to terminate his Tier I classification early, which would not have been permitted under Megan's Law, is permitted under the AWA, specifically R.C. 2950.15. Therefore, the trial court erred in 2020 in reclassifying appellant as a sexually oriented offender under Megan's Law, and that order was vacated.

It appears this part of the decision is in conflict with *State v. Jones*, 12th Dist. Butler No. CA2020-07-080, 2021-Ohio-2149.

The trial court also erred in denying appellant's request for credit for the period of "time he registered in Kentucky, because by registering in Kentucky he was complying with his registration duties under Ohio law" in accordance with R.C. 2950.04 and 2950.05; R.C. 2950.07(E), which the state argued "excludes credit for registration time in another jurisdiction against his Ohio duty to register pursuant to R.C. 2950.04, which stems from his Ohio conviction." The COA held "that R.C. 2950.07(E) does not apply in this case. That statute applies to offenders who committed their offenses and were registering in another state; it says nothing about offenders who committed their offenses in Ohio." Therefore, the case was remanded to consider if appellant's duty to register should be terminated early.

### **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. Pelmear, 2022-Ohio-1696***

Insufficient evidence - OOB

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2022/2022-Ohio-1696.pdf>

Evidence is insufficient for obstruction of official business conviction where only evidence presented was appellant's failure to provide his driver's license and insurance. " ' One cannot be guilty of obstructing official business by doing nothing.' [*Middletown v. Hollen*, [156 Ohio App.3d 565, 2004-Ohio-1502, 807 N.E.2d 945] at ¶ 30, quoting *Hamilton v. Hamm*, 33 Ohio App.3d 175, 176, 514 N.E.2d 942 (12th Dist.1986)."

### Seventh Appellate District of Ohio

*Nothing to report.*

### Eighth Appellate District of Ohio

***State v. Nascembeni*, 2022-Ohio-1662**

PRC

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-1662.pdf>

Trial court erred when it failed to impose postrelease control at appellant's sentencing hearing; and as appellant has completed his prison sentence, the court no longer has jurisdiction to resentence him. Also trial court "inaccurately journalized that court costs were imposed when they were not." Case remanded for nunc pro tunc entry waiving court costs.

***State v. J.R.*, 2022-Ohio-1664**

Ineffective assistance of counsel

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-1664.pdf>

Trial court lacked jurisdiction over appellant because she received ineffective assistance of counsel at her juvenile bindover hearing; defense counsel was under suspension from the practice of law throughout the juvenile court proceedings, including at the bindover hearing. "Considering the totality of the circumstances here, we believe this is such a case and that the circumstances warrant the presumption that [appellant] was denied the effective assistance of counsel without the need for [appellant] to establish specific attorney errors or prejudice as a result of the representation."

## **Ninth Appellate District of Ohio**

*Nothing to report.*

## **Tenth Appellate District of Ohio**

*Nothing to report.*

## **Eleventh Appellate District of Ohio**

**State v. Farhat, 2022-Ohio-1716**

Allocution

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2022/2022-Ohio-1716.pdf>

**Trial court erred by denying appellant his right of allocution pursuant to Crim.R. 32(A)(1); “court did not afford appellant an opportunity to address the substance of his offense, offer any mitigating considerations, speak to his lengthy criminal history, or to express remorse for his actions.”**

## **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**

*Nothing to report.*