Appellate Court Decisions –Week of 9/19/22

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

First Appellate District of Ohio

***State v. Hardman*, C-210189**

Postconviction petition

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

Trial court erred in dismissing two of appellant's four postconviction claims concerning the ineffectiveness of his trial counsel. Those two claims were not barred by res judicata as "the resolution of these claims depends on evidence outside the record."

***State v. Levingston*, C-210378**

Postconviction DNA testing

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

Trial court erred in denying appellant's petition for DNA testing without a hearing where "the court [failed] to order the state to use reasonable diligence to investigate whether biological material had been collected and whether a sample of that material still existed and then present those findings in a DNA-evidence report to the court. The court never ordered the state to investigate and prepare a DNA-evidence report. Without that information, the court could not reasonably determine whether a parent sample still existed to be tested. Because the court did not follow the proper statutory procedure in considering [appellant's] application, its finding that the record does not demonstrate that a sample of biological material exists is arbitrary." R.C. 2953.74 and 2953.75.

Second Appellate District of Ohio

***State v. Sutherland*, 2022-Ohio-3079**

Insufficient evidence; rape

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2022/2022-Ohio-3079.pdf

In conviction for two counts of rape, there was insufficient evidence as to one count to sustain such conviction where the alleged victim described sexual contact, not conduct, as there was no evidence or testimony presented as to

penetration. Conviction for one count of rape vacated and remanded to the trial court to modify its judgment to conviction of GSI.

***State v. Terrell*, 2022-Ohio-3165**

Right of allocution

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2022/2022-Ohio-3165.pdf

In conviction for menacing, appellant was denied her right of allocution at her sentencing hearing as required by Crim.R. 32(A)(1). Case remanded for a resentencing hearing.

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

Nothing to report.

Seventh Appellate District of Ohio

***State v. Messenger*, 2022-Ohio-3120**

Confrontation; testimony of child victim

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2022/2022-Ohio-3120.pdf

In convictions for child endangering and assault, trial court erred in permitting the testimony of alleged child victim via closed circuit television outside the presence of appellant; the state's motion was untimely under R.C. 2945.481 and as a consequence of the last-minute filing, "the defense had inadequate time to prepare for the hearing or to formulate a strategy to overcome the inference created by the manner of the child victim's testimony * * * [and] the admission of

I.S.'s testimony does not constitute harmless error." Convictions reversed and remanded for a new trial.

Eighth Appellate District of Ohio

Nothing to report.

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

Nothing to report.

Supreme Court of the United States

Nothing to report.