

Appellate Court Decisions – Week of 11/28/22

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

First Appellate District of Ohio

State v. Thomann, C-2105429

Sentencing; stay-away order

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

Where appellant was sentenced to prison, trial court erred in imposing a stay-away order, as such order is a community control sanction and is not permitted if court imposes a prison term.

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

State v. Howard, 2022-Ohio-3992

Record sealing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2022/2022-Ohio-3992.pdf>

Trial court erred in denying appellant’s application to have her criminal convictions for trespass in a habitation and assault sealed. Although court found correctly that appellant was eligible, it “abused its discretion in concluding the State’s interest in recouping payment from [a]ppellant to the [Crime Victims Reparation] Fund outweighed her interest in having the

record sealed” where the victim supported the application, and appellant had executed a promissory note to the Fund so the record sealing would not interfere with her repayment.

Sixth Appellate District of Ohio

State v. Irving, 2022-Ohio-4019

PRC

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2022/2022-Ohio-4019.pdf>

Although trial court correctly advised appellant at both the plea and sentencing hearings that he would be subject to “up to three years, but not less than one year” of PRC, the sentencing entry was incorrect. Case remanded for nunc pro tunc entry, correcting PRC.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. A.L.H., 2022-Ohio-4016

Record sealing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-4016.pdf>

As appellant was an eligible offender and was seeking to have an eligible offense sealed, the trial court erred by denying his applications for sealing of the record of conviction without a hearing. Case remanded for court to hold such a hearing.

State v. Mills, 2022-Ohio-4010

Evid.R 403 and Evid.R. 404

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2022/2022-Ohio-4010.pdf>

In convictions for falsification and dereliction of duty, “the trial court erred when it allowed into evidence a photograph of a dying inmate and testimony about inmate deaths at the Cuyahoga County jail.” This evidence was

inadmissible, “whether admitted pursuant to Evid.R. 403 or 404(B).” Such evidence was not harmless, and the other evidence was not overwhelming.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

State v. Wagner, 2022-Ohio-4051

Self-defense

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2022/2022-Ohio-4051.pdf>

In convictions for felonious assault, discharge of a firearm on or near prohibited premises, improperly handling firearms in a motor vehicle, and falsification, COA holds that “Stand Your Ground” law which came into effect after the offense, but prior to trial, should have applied to appellant’s case. Therefore, the trial court erred by not giving the jury instruction that appellant had no duty to retreat for purposes of his self-defense claim. Case remanded for a new trial on all charges except for the falsification conviction.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

State v. P.J.F., 2022-Ohio-4152

Record sealing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2022/2022-Ohio-4152.pdf>

“R.C. 2953.32—Sealing of records—When an offender’s nonresidential community control is terminated, the conditions of nonresidential community

control are terminated as well and the offender receives a final discharge from the community-control sanction.”

In conviction for nonsupport, failure of appellant to satisfy a condition of community control, in this case pay the arrearages owed, does not prevent him from receiving a final discharge from his community control. Therefore, appellant was eligible to have his record sealed, and the trial court did not err in ordering it sealed.

State v. Bond, 2022-Ohio-4150

Partial closure of trial

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2022/2022-Ohio-4150.pdf>

“Structural error—Public-trial violation—Defendant did not object in the trial court to courtroom closure, so a plain-error analysis applies—Defendant failed to establish that the violation rose to the level of a plain error that must be corrected.”

State v. Martin, 2022-Ohio-4175

Bindover

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2022/2022-Ohio-4175.pdf>

“A juvenile court’s probable-cause determination at a mandatory-bindover hearing is not subject to manifest-weight review on appeal.”

OSC concluded that “we reverse a criminal conviction when it is not supported by the manifest weight of the evidence. But manifest-weight review—which requires a weighing of all the evidence—is a different inquiry from whether there is probable cause to believe that a crime has been committed.”

In re T.A., 2022-Ohio-4173

Reopening appeal

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2022/2022-Ohio-4173.pdf>

“App.R. 26(B)—A person adjudicated a juvenile delinquent may not reopen his or her direct appeal from the adjudication based on a claim of ineffective assistance of appellate counsel under App.R. 26(B)—Although App.R. 26(B)

does not apply to a direct appeal from a juvenile adjudication, the appellant may avail himself or herself of the pre-rule procedures described in State v. Murnahan.

OSC found that App.R. 26(B) did not apply to juvenile adjudications by using “general principles of statutory construction to interpret court rules * * * [a]n unambiguous rule should be applied by giving effect to its language without adding or deleting words.” And since the rule applied only to criminal cases and criminal convictions, it could not be utilized by a child to reopen the appeal of his adjudication.

However, *Murnahan* saves the day: “But we do not read App.R. 26(B) as supplanting *Murnahan* as a whole. Although App.R. 26(B) does not apply to T.A.’s appeal, he may avail himself of the pre-rule procedures described in *Murnahan* * * * [t]he time for T.A. to seek reconsideration of the court of appeals’ judgment in his direct appeal and the time for T.A. to file a direct appeal from that judgment to this court has expired, which leaves T.A. the option of pursuing a delayed claim of ineffective assistance of appellate counsel through an application for delayed reconsideration in the court of appeals in which the alleged error took place. See *Murnahan*, 63 Ohio St.3d 60, 584 N.E.2d 1204, at paragraph three of the syllabus. If he does so and the court of appeals denies the motion for delayed reconsideration, T.A. may seek a delayed appeal in this court. *Id.*”

State v. Garrett, 2022-Ohio-4218

Death penalty

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2022/2022-Ohio-4218.pdf>

“Aggravated murder—Findings of guilt and death sentence affirmed.”

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.