Appellate Court Decisions –Weeks of 2/20/23, 2/27/23 & 3/6/23

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

First Appellate District of Ohio

***State v. Merz*, C-220085**

Sentencing; merger v. concurrent sentences

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

In second appeal of convictions for GSI and abduction on remand with instructions that offenses were allied, trial court erred in sentencing appellant to concurrent sentences. "'The imposition of concurrent sentences is not the equivalent of merging allied offenses * * *.' *State v. Williams*, 148 Ohio St.3d 403, 2016-Ohio-7658, 71 N.E.3d 234, ¶ 3." Case also remanded with instructions to determine the proper jail-time credit and to impose only one sex-offender classification.

***State v. Dickey*, C-220536**

Bail

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

Trial court erred in sua sponte holding appellant without bail pursuant to R.C. 2937.222 without any evidence being presented, much less clear and convincing evidence, "that the proof is evident or the presumption great that the accused committed the offense described in division (A) of this section with which the accused is charged, [trial court] finds by *clear and convincing evidence* that the accused poses a substantial risk of serious physical harm to any person or to the community, and [trial court] finds by *clear and convincing evidence* that no release conditions will reasonably assure the safety of that person and the community" as required by the statute.

Second Appellate District of Ohio

***State v. Greene*, 2023-Ohio-389**

Sentencing; Reagan Tokes

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2023/2023-Ohio-389.pdf

Trial court erred when it failed to inform appellant of the proper Reagan Tokes Act notifications required by R.C. 2929.19(B)(2)(c) at sentencing. Trial court made a misstatement "that if [appellant] had not been released prior to the expiration of the '*minimum* prison term imposed as part of this sentence,' he must be released when that term expired. (Emphasis added.) We infer that the court meant to inform [appellant], pursuant to R.C. 2929.19(B)(2)(c)(v), that he must be released upon the expiration of his *maximum* term, if he had not already been released." This misstatement was "material and constituted a failure to provide the notifications required by R.C. 2929.19(B)(2)(c)(v)."

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

***State v. Wilson*, 2023-Ohio-419**

Sentencing; Reagan Tokes

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2023/2023-Ohio-419.pdf

In conviction for felonious assault, trial court erred when it failed to inform appellant of the correct maximum prison term on the record, pursuant to the Reagan Tokes Act.

***State v. Locke*, 2023-Ohio-631**

Statutory speedy trial

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2023/2023-Ohio-631.pdf

In convictions for various felonies, trial court erred when it denied appellant's motion to dismiss for violation of his right to a speedy trial. "[A]ppellant was not brought to trial within speedy-trial time limits. Appellant's motion to dismiss of August 9, 2021 was filed 167 days after the

date time began to run on February 23, 2021. [COA] find[s] 55 days chargeable to appellant, as noted supra. 167 days minus 55 days is 112 total days, in excess of the 90-day limit of R.C. 2945.71."

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***Lakewood v. Hocter*, 2023-Ohio-375**

No-contest plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-375.pdf

"[T]rial court erred by accepting appellant's no-contest plea without informing him of the effect of a no-contest plea as required by Crim.R. 11(E).

***State v. Johnson*, 2023-Ohio-445**

Confrontation Clause

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-445.pdf

In conviction for domestic violence and child endangering, "trial court erred by admitting statements made by the alleged victim during a 911 call * * * there was no ongoing emergency at the time of Rogers' 911 call, that Rogers' statements during the 911 call identifying [appellant] as her assailant and reporting what he had done were testimonial and that admission of those statements at trial violated [appellant's] constitutional right to confront the witnesses against him." As the alleged victim did not testify and was not subject to cross-examination at trial, and the statements made were testimonial, such testimonial statements violated the Confrontation Clause.

***Cleveland v. Martin*, 2023-Ohio-448**

Guilty plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-448.pdf

Trial court erred by accepting appellant's guilty plea without informing her of the effect of such a plea as required by Crim.R. 11(E).

***State v. Jackson*, 2023-Ohio-455**

Sentencing; Reagan Tokes

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-455.pdf

Trial court erred when it failed to inform appellant of the proper Reagan Tokes Act notifications required by R.C. 2929.19(B)(2)(c) when imposing appellant's prison sentence.

***Cleveland v. Boyd*, 2023-Ohio-459**

Sentence; community control

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-459.pdf

In conviction for criminal mischief, a misdemeanor of the third degree, trial court did not err in ordering appellant to submit to anger management and a mental health assessment, as "both contribute to the rehabilitation of defendants because they both fall under the umbrella of mental health treatment and are designed to rehabilitate individuals by their very nature." However, "the trial court [did abuse] its discretion in imposing community-control conditions relating to substance abuse, including SAA/C and SAT, where the record before [the COA] does not suggest that drugs and/or alcohol contributed to [appellant's] criminal conduct."

***State v. Clay*, 2023-Ohio-525**

Consecutive sentences; PRC

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-525.pdf

In convictions for various offenses, trial court erred in imposing consecutive sentences where the court failed to make "the findings [pursuant to R.C. 2929.14(C)] that consecutive sentences were necessary for protection of the public or punishment of appellant or that consecutive sentences were not disproportionate to the danger posed by him." Court also "improperly imposed postrelease control for a period greater than provided under R.C. 2967.28(C) for a fourth-degree felony."

***State v. Smith*, 2023-Ohio-603**

Confrontation Clause

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-603.pdf

In two separate cases, with convictions for domestic violence in one case and felonious assault and domestic violence in the other, the convictions solely for domestic violence in the first case are vacated; "trial court erred by admitting evidence of out-of-court statements made by the alleged victim, who did not testify at trial, in violation of [appellant's] rights under the Sixth Amendment's Confrontation Clause and the rules of evidence." Such statements had been captured by the police officer's body camera footage; there were testimonial, as the "primary purpose" of the victim's statements were to identify appellant and "provide an account of the assault." There was no longer any "ongoing emergency."

Ninth Appellate District of Ohio

***State v. Lockert*, 2023-Ohio-440**

Waiver of counsel

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2023/2023-Ohio-440.pdf

Prior to the commencement of appellant's bench trial, "the trial court erred by failing to ensure [appellant] voluntarily, knowingly, and intelligently waived her constitutional right to counsel." Case remanded for appellant to "be given the opportunity to request a new trial, or to request the jail term portion of her sentence be vacated."

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.