Appellate Court Decisions –Week of 4/10/23

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

First Appellate District of Ohio

***State v. Arnold*, C-220284**

Insufficient evidence; making false alarms

Full Decision: (No web cite as of yet)

Appellant's conviction for making false alarms was not supported by sufficient evidence. As appellant was charged under R.C. 2917.32(A)(3) which provides that the state must prove the alleged offender actually made the false alarm, and the trial court stated on the record that "[t]he only thing the state didn't prove was whether or not [appellant] was the person on the tape making the report," then there was insufficient evidence to support appellant's conviction.

***State v. Kenton*, C-220340**

Forfeiture of firearm

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

In conviction for using weapons while intoxicated, a misdemeanor of the first degree, trial court erred in ordering the forfeiture of the handgun. "[A] misdemeanor under R.C. 2923.15 does not specifically authorize forfeiture of seized items, and the record does not demonstrate the necessary procedures to initiate forfeiture proceedings."

Second Appellate District of Ohio

***State v. Fleming*, 2023-Ohio-961**

Jail-time credit

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2023/2023-Ohio-961.pdf

On remand for resentencing, trial court erred when it failed to determine appellant's jail-time credit earned as of the date of the resentencing hearing. Case remanded.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

***State v. Hancock*, 2023-Ohio-1102**

Community control violation

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2023/2023-Ohio-1102.pdf

Trial court erred when it sentenced appellant to 18 months in prison for a violation of her community control where the state "failed to prove any violation, and when the trial court failed to advise the appellant of her right to counsel at the June 27, 2022, hearing at which the sentence was imposed * * * not only did the State of Ohio fail to present 'substantial proof' of the appellant's willful violation of her community control conditions, it did not even appear for the revocation hearing."

Sixth Appellate District of Ohio

***State v. Velesquez*, 2023-Ohio-1100**

Costs of confinement/ability to pay

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2023/2023-Ohio-1100.pdf

Trial court erred when it imposed the discretionary costs of confinement on appellant in the sentencing entry without addressing the issue at the sentencing hearing and without "affirmatively find[ing] that the [appellant] has or reasonably may be expected to have, the ability to pay." *See* R.C. 2929.19(A)(5). Order to pay costs of confinement vacated.

***Toledo v. Spiess*, 2023-Ohio-1099**

Discovery violations

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2023/2023-Ohio-1099.pdf

In city's appeal, trial court did not err in dismissing patient abuse or neglect charge against appellee for "several alleged discovery deficiencies. Although Crim.R. 48, which provides the procedure for dismissing cases by the court, requires the court to state "findings of fact and reasons for the dismissal * * *, [t]he failure of a trial court to follow Crim.R. 48(B), therefore, is harmless error 'when the record is clear as to the basis of the court's action.' *State v. Neal*, 6th Dist. Lucas No. L-92-225, 1993 WL 32301, *1 (Feb. 12, 1993), quoting *State v. Nelson*, 51 Ohio App.2d 31, 33, 365 N.E.2d 1268 (8th Dist. 1977); *see also State v. McCullough*, 8th Dist. No. 105959, 2018-Ohio-1967, ¶ 17." During the hearing on the motion to dismiss, defense counsel clearly stated the various discovery issues on the record; "the trial court then stated: 'I am going to allow a dismissal based on what's been said.' Thus, the transcript of the proceeding reveals that the trial court dismissed the complaint based on the discovery issues raised by [appellant]. The trial court, therefore, sufficiently stated its reasons for dismissal."

Seventh Appellate District of Ohio

***State v. Kellie*, 2023-Ohio-1015**

PRC

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2023/2023-Ohio-1015.pdf

Trial court erred in adding PRC to [appellant's] 1999 sentencing entry in 2021 after appellant had completed his prison sentence. New 2021 sentencing entry vacated, and sentencing entry from 1999 reinstated.

***State v. Strojny*, 2023-Ohio-1016**

Right to counsel

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2023/2023-Ohio-1016.pdf

Appellant was denied her right to counsel at her sentencing hearing where she was unrepresented. Trial court also erred in denying appellant's presentence motion to withdraw her guilty plea where trial court had advised appellant that her "sentence would consist of community service

and a fine in lieu of jail time, and in no way indicated any predetermination to impose incarceration." Then later at the sentencing hearing, the court "had a mistaken recollection of the agreement," and instead sentenced appellant to jail. And most "troubling [was the fact] that the signed plea agreement filed on September 15, 2021, appears to have been altered after it was signed. Jail time was changed to 180 days, the reference to 50 hours of community service was removed, and the $500 fine was also removed. The document (before the changes were made) reflects the agreement made at the change of plea hearing. Post facto modification of a plea agreement containing an agreed sentence without the defendant's consent by itself would provide sufficient reason to allow withdrawal of a plea."

Eighth Appellate District of Ohio

***State v. Mitchell*, 2023-Ohio-1034**

Consecutive sentences

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-1034.pdf

Although trial court made the necessary R.C. 2929.14(C) findings at the sentencing hearing to support the consecutive sentences, it failed to include those in the sentencing entry; case remanded for nunc pro tunc entry.

***State v. Sullivan*, 2023-Ohio-1036**

Sentencing; Reagan Tokes

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-1036.pdf

Trial court erred in failing to notify appellant of all the Reagan Tokes advisements found in R.C. 2929.19(B)(2)(c); case remanded solely to advise appellant of those advisements.

***State v. Garrison*, 2023-Ohio-1039**

Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-1039.pdf

Although trial court correctly sentenced appellant for an attempted felonious assault, among other offenses, the sentencing entry incorrectly stated that appellant had pled guilty to felonious assault; case remanded to correct the sentencing entry.

***State v. Kramer-Kelly*, 2023-Ohio-1031**

Crim.R. 14/joinder

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-1031.pdf

In convictions for rape and kidnapping, trial court erred in denying appellant's motion to sever rape and kidnapping charges involving two victims. Appellant was prejudiced by the joinder of the offenses involving these two victims because "a jury may 'apply or accumulate' evidence from L.W.'s case to evidence from S.S.'s case" and "the evidence from either case would be inadmissible in the other case as 'bad character' or 'propensity' evidence in violation of Evid.R. 404(B), and this will have 'a negative impact upon the jurors' feeling about him.'" Convictions and sentence vacated, and case remanded for new trials.

***In re A.B.*, 2023-Ohio-1047**

Juvenile sex offender classification

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-1047.pdf

In adjudication for sexual battery, trial court erred in classifying appellant as a Tier I sex offender. Appellant's classification was not mandatory, as appellant was 14 years old at the time of the offense; this was appellant's first and only offense; and the "court's finding with respect to [appellant's] participation in and completion of sexual offender therapy is unsupported by the record * * * [appellant] completed treatment at Abraxas, continues to be engaged in treatment, and has had no issues in complying with the terms of his treatment or other court orders throughout the duration of this case." COA reversed appellant's Tier I classification.

***In re Contempt of Bensing*, 2023-Ohio-1050**

Contempt of attorney

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-1050.pdf

Trial court erred in finding defense attorney in direct contempt where, although "[appellant] certainly could have handled the matter better, the record reflects that Bensing was not reckless or indifferent to the trial court's authority, he did not intend to disrespect the trial court, and his conduct did not pose any imminent threat to the administration of justice * * * [a]lthough [appellant's] conduct was contemptuous to the trial court's sensibilities, it did not constitute punishable, criminal contempt."

***State v. Wilson*, 2023-Ohio-1042**

Drive-by shooting specification

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-1042.pdf

"The trial court erred by imposing the five-year drive-by shooting firearm specifications upon appellant for a conviction of discharge of firearm on or near prohibited premises, a strict liability offense." The specification requires that the offender commit a felony which contains "'as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another * * *,' R.C. 2941.146(A), yet discharge of a firearm on or near prohibited premises is a strict liability offense lacking the mens rea of 'purposely or knowingly.' [*State v.*] *James*, 2015-Ohio-4987, 53 N.E.3d 770, at ¶ 33."

Ninth Appellate District of Ohio

***State v. Lauer*, 2023-Ohio-1076**

IAC

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2023/2023-Ohio-1076.pdf

In conviction for criminal mischief, "trial counsel rendered ineffective assistance by failing to move for acquittal under Crim.R. 29 at the end of the State's case-in-chief based upon the State's failure to identify [appellant] as the person who committed the offense."

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

***State v. Muhire*, 2023-Ohio-1181**

No contest plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2023/2023-Ohio-1181.pdf

Appellant's no contest plea was not knowingly, intelligently, and voluntarily entered, as appellant "never actually entered a no contest plea into the record prior to the trial court issuing its decision finding [appellant] guilty." COA also found that even if appellant had entered his plea, the trial court failed to inform him of the effect of his plea. Crim.R. 11(E). Conviction reversed and case remanded.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.