Appellate Court Decisions –Week of 4/17/23

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

First Appellate District of Ohio

Nothing to report.

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

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Logan*, 2023-Ohio-1135**

Sentencing; firearm specification

READ THIS OPINION CAREFULLY - IT IS THE FIRST COA THAT HAS STATED THAT A TRIAL COURT DOES NOT HAVE TO IMPOSE A PRISON TERM ON THE UNDERLYING FELONY, DESPITE HAVING TO IMPOSE A MANDATORY PRISON TERM ON THE FIREARM SPECIFICATION ATTACHED TO THE UNDERLYING FELONY.

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-1135.pdf

In state's appeal, trial court did not err in sentencing appellant to "a one-year mandatory prison term for the firearm specification and a two-year community-control term for the underlying felony [of attempted WUD]." ("The offense of having a weapon while under a disability is not enhanceable with a sentence from a firearm specification unless 'the offender previously has been convicted of * * * any felony of the first * * * or second degree' and '[l]ess than five years have passed since the offender was released from prison or post-release control, whichever is later, for the prior offense.' R.C. 2929.14(B)(1)(e). Here, those circumstances were met.").

The COA "conclude[d] that R.C. 2929.13(F)(8) only requires that a trial court impose the prison term set forth in R.C. 2929.14(B)(1)(a) when crafting a sentence for a felony offense (other than a violation of R.C. 2923.12) that carries a firearm specification; it does not require a trial court to impose a prison term on the felony offense underlying a firearm specification * * * [appellant's] argument rests on the final few words of R.C. 2929.13(F)(8); the statute requires a mandatory prison term 'or any of the following offenses: * * * any offense that is a felony, if the offender had a firearm on or about the offender's person or under the offender's control while committing the felony, *with respect to a portion of the sentence imposed pursuant to [R.C. 2929.14(B)(1)(a)] for having the firearm*.' (Emphasis added.) [Appellant] contends that the state's argument inexplicably reads this phrase out of the statute. We agree."

***State v. Giarelli*, 2023-Ohio-1134**

Withdrawal of guilty plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-1134.pdf

In state's appeal, trial court did not err in granting appellant's Crim.R. 32.1 motion to vacate his guilty plea because the motion was supported by

"– newly discovered exculpatory evidence;

– false information provided to police by the three alleged victims;

– subsequent prosecution of the three victims for falsification after [appellant] pled guilty and was sentenced;

- involvement of [appellant's] original defense counsel in the representation of one of the victims;

- misinformation regarding the consequences of his guilty pleas;

- effect of plea was unknown; and

- guilty plea was unknowing, involuntary, and unintelligent due to ineffective assistance of counsel.

And despite this being appellant's second motion to withdraw his plea, it was not barred by res judicata, as the first motion presented no arguments or evidence so it was never "judged on its merits."

***State v. Hess*, 2023-Ohio-1147**

Termination of community control

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-1147.pdf

Municipal trial court erred in denying appellant's motion to terminate his community control after he was sentenced to a term of community control in common pleas court. R.C. 2951.022 provides that when a person is a "concurrent supervision offender" (simultaneously subject to supervision in wo or more municipal or county courts; two or more CP courts; or one or more CP courts and one or more municipal courts), he "'shall be supervised by the court that imposed the longest possible sentence of incarceration and shall not be supervised by any other court.' R.C. 2951.022(B)(1)."

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

***State v. Light*, 2023-Ohio-1187**

Allocution

Full Decision:

https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2023/2023-Ohio-1187.pdf

In conviction for cruelty to animals, at sentencing and after trial court introduced additional evidence into the record, court failed to give appellant his right of allocution. Sentence vacated and case remanded for resentencing.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

***United State v. Ferguson*, No. 21-3800**

Insufficient evidence; attempted kidnapping

Full Decision:
http://www.opn.ca6.uscourts.gov/opinions.pdf/23a0079p-06.pdf

Appellant's conviction for attempted kidnapping was not supported by sufficient evidence where "he did not take a substantial step, both because his plan was decidedly underdeveloped and exploratory in nature and because his actions did not clearly corroborate an intent to commit the specific offense with which he was charged—namely, kidnapping."

Supreme Court of the United States

Nothing to report.