

Appellate Court Decisions –Week of 5/22/23

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

First Appellate District of Ohio

State v. Kendrick, C-220459

Jail-time credit

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

Trial court erred in failing to award appellant with two days of jail-time credit in the sentencing entry. Case remanded to award such credit.

Second Appellate District of Ohio

State v. Chatman, 2023-Ohio-1590

Driver's license suspension

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2023/2023-Ohio-1590.pdf>

In conviction of attempted failure to comply with an order or signal of a police officer, trial court erred in imposing a three-year driver's license suspension; such "suspension is not authorized when an offender is convicted of attempt to commit an offense under R.C. 2923.02 * * * [but] is authorized only when an offender is convicted of actual failure to comply in violation of R.C. 2921.331."

Third Appellate District of Ohio

State v. Smith, 2023-Ohio-1613

Sentencing; mandatory

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2023/2023-Ohio-1613.pdf>

In convictions of various sex offenses, trial court erred in imposing mandatory sentences for four counts of GSI. R.C. 2907.05(C)(2) which required mandatory sentences for GSI if there was corroboration was

found unconstitutional in *State v. Bevely*, 142 Ohio St.3d 41, 2015-Ohio-475, 27 N.E.3d 516. Case remanded for resentencing on those counts.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

***State v. Shields*, 2023-Ohio-1561**

Withdrawal of guilty plea

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2023/2023-Ohio-1561.pdf>

In state's appeal, trial court did not err in permitting appellant to withdraw his guilty plea prior to sentencing. Appellant had intended to plead no contest, but the state insisted on a guilty plea for the agreed plea and sentencing agreement. Appellant initially did not realize that in pleading guilty, "he lost the ability to challenge the trial court's ruling on his motion to suppress * * *."

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Sanders*, 2023-Ohio-1565**

Allied offenses

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-1565.pdf>

In convictions for disseminating matter harmful to juveniles and two counts of endangering children, trial court committed plain error when it failed to merge those offenses. Originally, appellant was charged with "three separate crimes: (1) [appellant] showing the video to the victim, (2)

[appellant] exposing his penis to the victim (one count of gross sexual imposition), and (3) appellant forcing the victim to touch his penis (the other count of gross sexual imposition).” However, as one count of GSI was dismissed by the state, and appellant was found not guilty of the second count of GSI, that left only one act remaining of which appellant was convicted - the showing of the video. “Although the one act constituted more than one crime, for the purpose of sentencing, all the counts should have merged.”

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

State v. Oliver, 2023-Ohio-1550

Suppression; pat-down

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2023/2023-Ohio-1550.pdf>

In convictions of felony gun charges, although initial traffic stop was lawful, the subsequent search of appellant’s person was not lawful. Trial court erred in denying appellant’s motion to suppress such search where the smell of raw marijuana emanating from a car in which appellant was a driver with four other passengers did not justify the warrantless pat-down. The officer never testified he smelled marijuana coming from appellant’s person; the state never claimed at the trial court level that the search was a protective sweep for weapons so that argument was waived; and the state did not argue inevitable discover at the trial court level so that argument was also waived.

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

State ex rel. Roush v. Hickson, 2023-Ohio-1696

Dismissal of writ of mandamus; notice

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2023/2023-Ohio-1696.pdf>

“A court must give the parties notice and an opportunity to be heard before taking notice of facts contained in another court’s docket and relying on those facts to sua sponte dismiss a complaint for failure to comply with R.C. 2969.25—Court of appeals failed to give appellant notice and an opportunity to be heard on propriety of its taking notice of his earlier federal filing before sua sponte dismissing his complaint for failure to comply with R.C. 2969.25(A).”

State ex rel. Cartwright v. Ohio Adult Parole Bd., 2023-Ohio-1717

Parole violations

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2023/2023-Ohio-1717.pdf>

“Notice of alleged parole violations provided to inmate served as effective written notice that meets requirements of due process—Evidence presented at parole-revocation hearing is sufficient to support Ohio Parole Board’s finding that Ohio Adult Parole Authority had proved by preponderance of the evidence that inmate committed alleged violation.”

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.