

## Appellate Court Decisions –Week of 6/12/23

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

### First Appellate District of Ohio

#### **State v. Woodard, C-220364 & 365**

Jury instructions; lesser-included offense

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

In conviction for felonious assault, trial court erred in failing to instruct the jury on the lesser-included offense of assault where there was no evidence presented that appellant’s punch caused serious physical harm to the victim. Case remanded for new trial.

### Second Appellate District of Ohio

#### **State v. Taylor, 2023-Ohio-1766**

Sentencing; Reagan Tokes

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2023/2023-Ohio-1766.pdf>

Trial court erred in calculating appellant’s maximum sentence under Reagan Tokes. “[C]ourt had correctly imposed an aggregate minimum 63-year sentence, which included five sentences of 11 to 16.5 years imposed consecutively to each other and one eight to 12-year sentence imposed consecutively to the other sentences \* \* \* [however], the court had erred in adding all the maximum sentences together to arrive at a total maximum sentence of 94.5 years, when the correct approach was to take the highest range (5.5 years), and add that to the 63-year sentence, for a total aggregate sentence of 63 to 68.5 years in prison.

#### **State v. Midkiff, 2023-Ohio-1835**

Sentencing; Reagan Tokes

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2023/2023-Ohio-1835.pdf>

Appellant's "sentence was contrary to law due to the trial court's failure to provide the notifications required under R.C. 2929.19(B)(2)(c)." Case remanded for resentencing.

### Third Appellate District of Ohio

**State v. Van Den Eynde, 2023-Ohio-1790**

Sentencing; community control violation

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2023/2023-Ohio-1790.pdf>

Trial court erred in imposing a prison sentence "for a community control violation without having expressly reserved a stated range of prison terms at her original sentencing hearing in compliance with R.C. 2929.19(B)(4)." Although a trial court is no longer required to state the specific prison term that may be imposed for a violation (R.C. 2929.19(B)(4) was revised on September 30, 2021 and now states that the court only must "indicate the range from which the prison term may be imposed as a sanction for the violation"), the court in the case at bar did not even reserve a range of possible prison terms. Case remanded to vacate the prison term and reinstate community control.

### Fourth Appellate District of Ohio

*Nothing to report.*

### Fifth Appellate District of Ohio

**State v. Conner, 2023-Ohio-1806**

Withdrawal of guilty plea

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2023/2023-Ohio-1806.pdf>

Trial court erred in denying appellant's Crim.R. 32.1 presentence motion to withdraw his guilty plea without a hearing. The trial court is required to conduct such a hearing for a presentence motion. *State v. Xie*, 62 Ohio St.3d 521, 526, 584 N.E.2d 715 (1992).

## **Sixth Appellate District of Ohio**

*Nothing to report.*

## **Seventh Appellate District of Ohio**

*Nothing to report.*

## **Eighth Appellate District of Ohio**

### **State v. Moore, 2023-Ohio-1819**

Community control conditions

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-1819.pdf>

**Trial court erred in imposing drug and alcohol prohibitions as conditions of community control where appellant's conviction for improperly handling a firearm bore no relation to alcohol or drug use. Conditions vacated.**

## **Ninth Appellate District of Ohio**

*Nothing to report.*

## **Tenth Appellate District of Ohio**

*Nothing to report.*

## **Eleventh Appellate District of Ohio**

*Nothing to report.*

## **Twelfth Appellate District of Ohio**

### **State v. Piercefield, 2023-Ohio-1781**

Witness' personal knowledge; inadmissible testimony

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2023/2023-Ohio-1781.pdf>

Trial court erred when it permitted police officer “to testify to matters outside his personal knowledge.” Evid.R. 602. Officer’s conclusion that appellant caused the injuries to the alleged victim “was based upon [the victim’s] out-of-court statements \* \* \* the sergeant’s conclusion did not stem from his firsthand observation or experience, but was based upon his out-of-court conversation with [the victim] or her 9-1-1 call, which was not admitted into evidence or played during trial.” Case remanded for a new trial.

### ***State v. Lindsey, 2023-Ohio-1846***

Postconviction relief

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2023/2023-Ohio-1846.pdf>

In successive petition for postconviction relief, trial court erred in denying such petition as barred by “res judicata without first determining whether the petitioner satisfied the jurisdictional requirements of R.C. 2953.23(A) *State v. Hatton*, 169 Ohio St.3d 446, 2022-Ohio-3991, ¶ 41 \* \* \* the trial court [] must ‘begin by answering the threshold question—whether [the Petitioner] satisfied the jurisdictional requirements of R.C. 2953.23(A)(1) to file an untimely and successive petition for postconviction relief.’ *Id.*”

### **Supreme Court of Ohio**

*Nothing to report.*

### **Sixth Circuit Court of Appeals**

*Nothing to report.*

### **Supreme Court of the United States**

*Nothing to report.*