

Appellate Court Decisions –Week of 7/24/23

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

First Appellate District of Ohio

State v. Mitchell, C-220471

Stand your ground law

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

In conviction for felony murder, appellant’s conviction was against the manifest weight of the evidence where “the state failed to prove beyond a reasonable doubt that [appellant] was at fault for creating the situation giving rise to the affray,” and appellant “had an objective and subjective belief that he was in such danger to use deadly force.” Case remanded for a new trial.

State v. Robertson, C-220047

Castle Doctrine instruction

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

In convictions for felonious assault, “trial court erred in failing to issue a so-called ‘Castle Doctrine’ [jury] instruction * * * that [appellant] was presumed to have acted in self-defense.” Case remanded for a new trial.

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

State v. Mitchell, 2023-Ohio-2239

Restitution

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2023/2023-Ohio-2239.pdf>

Trial court erred in failing to hold a full restitution hearing pursuant to R.C. 2929.18(A)(1); state concedes error.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

State v. Johnson, 2023-Ohio-2282

Plea agreement

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2023/2023-Ohio-2282.pdf>

Appellant’s guilty plea was not knowingly, voluntarily, or intelligently made because “the prosecution’s promises were illusory, and as such, the plea agreement lack[ed] consideration and [was] invalid, [was] not knowing and voluntary, and [did] not comport with due process. *See State v. Engle*, 74 Ohio St.3d 525, 527, 660 N.E.2d 450 (1996). ‘There is thus no bargain which can be enforced. This is not a case where the prosecution promised there would be no further criminal process—something within its power to control.’ *United States v. Hammerman*, 528 F.2d 326, 330-332 (4th Cir.1975) (vacating plea induced in part by prosecutor’s unfulfillable promise and finding no bargain that could be enforced).” Case remanded with instructions to allow appellant to withdraw his plea; “[i]n addition, the proceedings on remand should be conducted by a trial court judge who has not participated in the prior proceedings.”

Eighth Appellate District of Ohio

State v. Grays, 2023-Ohio-2482

Sentence; Reagan Tokes and earned credit

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-2482.pdf>

[2482.pdf](#)

“[T]he Reagan Tokes Law only prevents offenders serving a nonlife indefinite prison term for a sexually oriented offense from earning the sentencing reductions contemplated under R.C. 2967.271(F). All other offenders serving an indefinite prison term for a nonlife felony of the first- or second-degree are eligible for ERMPT * * * A trial court does not commit reversible error during a Crim.R. 11 colloquy by advising a criminal defendant, who is subject to an indefinite prison term under the Reagan Tokes Law, that he or she may earn a reduction on his or her minimum prison term for exceptional conduct or an adjustment to incarceration when the defendant is required to serve a mandatory prison term pursuant to R.C. 2929.13(F).” However, the trial court did err in failing to advise appellant during sentencing of all the notice requirements contained in R.C. 2929.19(B)(2)(c). Case remanded to so advise appellant.

State v. Nath, 2023-Ohio-2301

Sentence; nunc pro tunc entry to correct costs, fines, and specification

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-2301.pdf>

In conviction for sexual battery pursuant to a negotiated plea agreement, trial court erred when its sentencing entry incorrectly stated that appellant had been fined when no such fine had been imposed at the sentencing hearing; court also erred in including a sexual motivation specification when such specification had been deleted as part of the negotiated plea. Case remanded for court to issue a nunc pro tunc entry correcting these errors.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

State v. Thompson, 2023-Ohio-2260

Sentence; nunc pro tunc for clerical error

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2023/2023-Ohio-2260.pdf>

In convictions for various theft-related offenses, restitution was properly ordered as part of appellant's agreed plea and sentence. However, trial court erred in failing to attach the exhibit to the sentencing entry, demonstrating the amount of restitution and to whom it was owed. As this was simply a clerical error, case remanded for court to attach exhibit to a nunc pro tunc entry, and trial court's conversion of the restitution amount to a civil judgment is affirmed.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

State v. Hacker, 2023-Ohio-2535

Reagan Tokes

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2023/2023-Ohio-2535.pdf>

“Sentencing—R.C. 2967.271—Due Process Clause of the Fourteenth Amendment—Sixth Amendment right to a jury trial—Separation-of-powers doctrine—The Reagan Tokes Law is not void for vagueness, and it is not facially unconstitutional, because (1) it provides that offenders receive a hearing before the Department of Rehabilitation and Correction (“DRC”) may extend their prison sentence beyond the minimum but within the maximum term imposed by the trial court, (2) the right to a jury trial is not implicated since no determination by the DRC at the hearing changes the sentence range prescribed by the legislature and imposed by the trial court, and (3) the authority it gives the DRC to extend an offender’s prison sentence beyond the minimum but within the maximum range imposed by the trial court does not exceed the power given to the executive branch of the government and does not interfere with the trial court’s discretion when sentencing the offender.”

Sixth Circuit Court of Appeals

Nothing to report

Supreme Court of the United States

Nothing to report