

Appellate Court Decisions –Week of 8/14/23

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

First Appellate District of Ohio

State v. Evans, C-220562

Community control notification

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

Trial court erred in failing to advise appellant “of all the requirements and potential penalties for violating community control as required by R.C. 2929.19(B)(4).” Case remanded to provide the proper notifications.

State v. Wheeler, C-220490 & 491

Inadequate recording of trial

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

In convictions for aggravated menacing, appellant granted a new trial where there was a failure by the trial court to record the start of the trial, and the direct examination of one of the witnesses was not transcribed.

Second Appellate District of Ohio

State v. Saul, 2023-Ohio-2510

Suppression/*Miranda*

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2023/2023-Ohio-2510.pdf>

Trial court erred in denying appellant’s motion to suppress statements made by appellant after he was detained. Although the initial traffic stop and search of the vehicle, in which appellant was a passenger, were proper, “the situation changed from a routine traffic stop to a custodial interrogation when drugs were found on [the driver] and then in the van. Thereafter, incriminating questions were asked without advising appellant of his *Miranda* rights. [COA] conclude[s], as conceded by the State, that the trial court erred in overruling [appellant]’s motion to suppress the statements he made following his removal from the vehicle.”

Third Appellate District of Ohio

State v. Locker, 2023-Ohio-2533

Sentencing/judicial release violation

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2023/2023-Ohio-2533.pdf>

After appellant violated his judicial release terms and such release was terminated, the trial court erred in reimposing the original 36-month sentence “rather than the balance of the prison term as required by R.C. 2929.20(K).” Case remanded.

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

Nothing to report.

Ninth Appellate District of Ohio

Allen v. Spitler, 2023-Ohio-2525

Writ of prohibition

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2023/2023-Ohio-2525.pdf>

[2525.pdf](#)

Petitioner's petition for writ of prohibition, seeking an order to strike a 2020 sentencing entry entered by respondent judge, is granted. After judge sentenced petitioner to three years in prison in July 2020, judge then sua sponte filed a new sentencing entry two months later, changing the sentence to an indefinite term of three to four-and-a-half years. The respondent judge "patently and unambiguously lacked jurisdiction to enter a new sentencing order." Therefore, the later sentencing entry was vacated; and as the state did not appeal the original order and even though it was erroneous as it did not comply with the Reagan Tokes Act, it remained the final sentence.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

In re S.H., 2023-Ohio-2543

Juvenile sentence/consecutive

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2023/2023-Ohio-2543.pdf>

As the consecutive sentencing provisions of R.C. 2929.14(C)(4) applied to appellant since she was designated an SYO, the trial court erred in sentencing her to consecutive sentences without making the necessary "factors and findings required by R.C. 2929.14(C)(4). Further, no mention [was] made of these factors and findings in the court's judgment entry." State concedes error. Case reversed and remanded.

Twelfth Appellate District of Ohio

State v. Maloney, 2023-Ohio-2711

Allied offenses; aggravated burglary/felonious assault

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2023/2023-Ohio-2711.pdf>

Trial court erred in failing to merge appellant's convictions for aggravated burglary and felonious assault as allied offenses. First, the offenses "were

committed with the same import because the harm caused by the aggravated burglary and the felonious assault were the same.” Second, the offenses were not committed separately, as “the felonious assault was the very reason for [appellant’s] aggravated burglary.” And third, the offenses were not committed with a separate animus, as appellant “acted with a single criminal motive.”

State v. Campbell, 2023-Ohio-2815

Community control violation hearing/confrontation clause

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2023/2023-Ohio-2815.pdf>

In a hearing revoking appellant’s community control, trial court committed plain error by admitting as its own exhibit, a discharge summary from a treatment facility which contained allegations of why appellant was discharged, but for which no witness testified. The state had produced no evidence of appellant’s violation. Therefore, “the court abandoned its role as a neutral and detached factfinder and further deprived [appellant] of the right to confront and cross-examine the witnesses against her, both of which she is entitled to during revocation proceedings as a matter of due process.”

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

United State v. Jaffal, No. 19-2418

Lesser-included-offense instruction

Full Decision:

<http://www.opn.ca6.uscourts.gov/opinions.pdf/23a0176p-06.pdf>

District court erred in failing to give the lesser-included-offense jury instruction for simple drug possession where there was evidence “that [appellant] simply possessed the narcotics at issue and did not intend to distribute them.” Appellant was a heavy drug user, and the quantity of drugs he was found to possess was not “overwhelming” which could have been indicative that the drugs were for his personal use. Case remanded for a new trial.

Supreme Court of the United States

Nothing to report.