

Appellate Court Decisions – Week of 8/7/23

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

State v. Wood, 2023-Ohio-2441

Court-appointed counsel fees

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2023/2023-Ohio-2441.pdf>

Trial court erred in ordering appellant to pay court-appointed counsel fees as part of his sentence, as the OSC has held that R.C. 2941.54 states that such fees shall not be taxed as costs.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

State v. Lockhart, 2023-Ohio-2398

Arson registry/restitution

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2023/2023-Ohio-2398.pdf>

COA finds portion of the arson registry statute unconstitutional as violative of the separation of powers, and “strike[s] the unconstitutional portion of the statute requiring a recommendation from the prosecuting attorney and the investigating law enforcement agency before the trial court may impose less than a lifetime reporting requirement on an arson offender.”

COA also determined its decision and similar decision out of the Fourth District was in conflict with the First and Sixth District, but that conflict is already at the OSC, as the Sixth District *sua sponte* certified a conflict with the Fourth District last year. Oral arguments were held in March of this year.

Trial court also erred in ordering appellant to pay restitution for an amount that had already been covered by insurance. State concedes error.

Sixth Appellate District of Ohio

State v. Hair, 2023-Ohio-2422

Merger

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2023/2023-Ohio-2422.pdf>

In convictions for murder and felonious assault and other offenses, trial court committed plain error in failing to merge the murder and felonious assault convictions where there was only one victim and the murder charge and felonious assault charge were based upon the multiple stabbings as a whole.

Seventh Appellate District of Ohio

State v. Evans, 2023-Ohio-2373

Reagan Tokes

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2023/2023-Ohio-2373.pdf>

“[T]rial court failed to inform [a]ppellant at sentencing of the requisite notifications pursuant to R.C. 2929.19(B)(2)(c).” Case remanded for resentencing.

State v. Brown, 2023-Ohio-2696

State v. Snider, 2023-Ohio-2639

Remand with instructions for new judge

Full Decisions:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2023/2023-Ohio-2696.pdf>

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2023/2023-Ohio-2639.pdf>

In *Brown*, “the prosecutor’s statement to the trial court breached the agreement the State entered into with [a]ppellant to stand silent at sentencing. And the trial court relied on the prosecutor’s statement in sentencing appellant * * * this was plain error.”

In *Snider*, in convictions for murder and felonious assault, “the trial court acted unreasonably and arbitrarily, first in refusing to allow a reasonable opportunity for [a]ppellant to consider testifying on his own behalf, and second in denying his motion to reopen his case without citing any other legitimate interest that superseded [a]ppellant’s right to testify.”

What is interesting about both of these cases is that the COA remanded the cases with instructions to assign them to different trial judges. Steve Hardwick with OPD sent these to me because both of us agreed that this is very unusual in state court cases; both of us have seen it in federal court, but rarely in state courts.

Eighth Appellate District of Ohio

***State v. DeJesus*, 2023-Ohio-2485**

Sentencing; nunc pro tunc entry

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-2485.pdf>

As appellant was sentenced on Counts 1 and 3, but the sentencing entry reflects he was sentenced on Counts 1 and 2, case remanded for trial court issue a “correction of the error by a nunc pro tunc entry.”

Ninth Appellate District of Ohio

***State v. Fields*, 2023-Ohio-2430**

PRC

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2023/2023-Ohio-2430.pdf>

In 1999 convictions for rape and kidnapping, the trial court had erred by failing to notify appellant of post-release control at the time of sentencing. This error was compounded by the trial court sua sponte issuing a nunc pro tunc sentencing entry which included advisement of a five-year mandatory PRC term. Pursuant to R.C. 2929.191(C), the court was required to hold a hearing. Case remanded for court to hold such a hearing.

Tenth Appellate District of Ohio

State v. Jordan, 2023-Ohio-2402

Appeal/timely/service

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2023/2023-Ohio-2402.pdf>

In appeal of trial court's denial of appellant's motion for DNA testing, with such denial occurring over a year before appellant filed a motion for a delayed appeal, that motion is denied. However, COA "nevertheless treat[s] this appeal as a timely appeal as of right that may proceed accordingly." COA held that an application for DNA testing is civil proceeding, as it is similar to other postconviction proceedings which are civil. Therefore, under Civ.R.58(B), the clerk is required to complete service of notice of judgment within a three-day period; and "App.R. 4(A)(3) tolls the 30-day timeframe for filing an appeal in civil cases 'if the clerk has not completed service of notice of the judgment within the three-day period prescribed in Civ.R. 58(B).'" In the case at bar, there is no evidence that appellant was ever served with a copy of the entry denying his motion for DNA testing. Therefore, since he was not served, "the time in which [appellant] was required to file an appeal under App.R. 4(A) did not begin to run, and his notice of appeal filed April 27, 2023 was timely."

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

State v. Goldberg, 2023-Ohio-2633

PRC/community control notifications

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2023/2023-Ohio-2633.pdf>

As appellant was sentenced to community control, the “trial court’s designation of a discretionary postrelease control period in the sentencing entry was erroneous * * * [which] may be corrected through a nunc pro tunc sentencing entry * * *.” Also, trial court erred in failing to “inform [appellant] of the statutorily required notifications under R.C. 2929.19(B)(4), namely that violating another law or leaving the state without permission could result in additional sanctions, including the prison terms outlined by the trial court.” Case remanded for resentencing to include these notifications.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.

Fifth Circuit Court of Appeals

United State v. Johnson, No. 22-60596

Firearm offense/*Bruen* analysis

Full Decision:

<https://www.ca5.uscourts.gov/opinions/pub/22/22-60596-CRO.pdf>

In conviction of possessing a firearm by person who is an unlawful user of a controlled substance pursuant to Title 18 U.S.C. § 922(g)(3), that statute violates the Second Amendment. “In short, our history and tradition may support some limits on an intoxicated person’s right to carry a weapon, but it does not justify disarming a sober citizen based exclusively on his past drug usage. Nor do more generalized traditions of disarming dangerous persons support this restriction on nonviolent drug users. As applied to [appellant], then, § 922(g)(3) violates the Second Amendment.” Conviction reversed and indictment dismissed.

Another example of the influence *Bruen* has had on the analysis of firearm offenses. Excellent analysis - definitely worth a read.