

## Appellate Court Decisions –Week of 9/18/23

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

### First Appellate District of Ohio

#### **State v. Moore., C-220421**

Restitution

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

In conviction for criminal damaging, “trial court abuse[d] its discretion by ordering restitution in an amount that does not bear a reasonable relationship to the actual loss suffered.” *In re A.B.*, 1st Dist. Hamilton No. C-210010, 2021-Ohio-4273, ¶ 8, citing *In re M.N.*, 1st Dist. Hamilton No. C-160522, 2017-Ohio-7302, ¶ 8. Court erred by awarding “a restitution amount that was based on the cost of the replacement vehicle. However, the restitution amount should have been limited to the fair market value of the 2007 Prius” before the accident. Case remanded for a new restitution hearing.

#### **State v. Hayes, C-220529 & C-220530**

Sufficiency; improper passing and driving without a seatbelt

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

After acquittal on OVI charge, but convictions for driving without a seat belt, the traffic light violation, possession of an open container, and improper passing, there was sufficient evidence to support convictions for the traffic light violation and possession of an open container. However, there was insufficient evidence for improper passing where there was evidence presented that appellant may have weaved, but no evidence presented that he passed “a vehicle traveling in the opposite direction, as required for a conviction under Cincinnati Municipal Code 506.70.” There was also insufficient evidence that appellant drove without a seatbelt, as the only evidence presented was testimony that he was not wearing a seatbelt when the officer approached him after he was already stopped.

### Second Appellate District of Ohio

#### **Miami Twp. Bd. Of Trustees v. Powlette, 2023-Ohio-2890**

Contempt

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2023/2023-Ohio-2890.pdf>

In case where appellant was enjoined from using a barn as wedding/other event venue, but continued to do so, trial court erred in issuing a \$50,000 criminal contempt sanction after applying a “clear and convincing” standard of proof for civil contempt while imposing a criminal contempt sanction.” The appropriate standard of proof for criminal contempt is “beyond a reasonable doubt.”

***State v. Wright, 2023-Ohio-2895***

PCR

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2023/2023-Ohio-2895.pdf>

Trial court erred in denying appellant’s petition for post-conviction relief without a hearing. “The court erred in failing to distinguish between standards that apply to ineffective assistance claims on direct appeal and what is required for simply obtaining a hearing on a petition for post-conviction relief. A post-conviction petition does not have to definitively establish counsel’s deficiency or that the defendant was prejudiced by the deficiency. Instead, a petition must be sufficient on its face to raise issues about whether the defendant was deprived of effective assistance of counsel, and the claim must depend on factual allegations that cannot be decided by examining the record from the defendant’s trial.

The trial court also erred in rejecting various claims because the same issues had been raised on direct appeal. Where matters outside the record are presented, the fact that an issue had been raised on direct appeal is not an appropriate basis for rejecting a post-conviction petition. In addition, the court erred in categorically stating that failure to call an expert and reliance instead on cross-examination did not constitute ineffective assistance of counsel. This is true in direct appeals, where courts are often forced to speculate, as this alone cannot overcome the strong presumption that trial counsel rendered reasonable assistance. However, it does not apply in post-conviction situations, where courts are able to consider matters outside the record and are, therefore, not confined to speculation.”

**Third Appellate District of Ohio**

*Nothing to report.*

## 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

### **State v. Givens, 2023-Ohio-2898**

Statutory speedy trial

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2023/2023-Ohio-2898.pdf>

**In conviction for criminal trespass, trial court erred in trying appellant “outside the statutory speedy-trial time limit.” Appellant’s pro se letter properly preserved the speedy trial issue, as it constituted a motion to dismiss based on speedy-trial grounds.**

### **State v. Guterba, 2023-Ohio-2899**

Sufficiency; criminal damaging

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2023/2023-Ohio-2899.pdf>

**Conviction for criminal damaging was not supported by sufficient evidence where the junction box that appellant kicked was attached to a light pole which was a permanent structure, thereby becoming part of the real property. Since a trust owned the property on which the light pole was situated and appellant was the trustee, he could not be charged with damaging his own property. Also, the persons who erected the light pole, although having an irrevocable license in the property, were barred “from erecting permanent structures on the licensed land. Since they erected the pole in violation of those orders, they could not lawfully possess or own that**

which they were barred from installing. The pole and the fixtures attached to it became permanent structures owned by the Trust.”

## Eighth Appellate District of Ohio

**State v. Turner, 2023-Ohio-2874**

Juvenile bindover; sentencing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-2874.pdf>

In convictions for murder, attempted murder and WUD, trial court plainly erred in sentencing appellant, who was 16 years old at the time of the offense, to 25 years to life. State conceded error. Trial court also lacked subject-matter jurisdiction as to the charge of WUD where the juvenile court found no probable cause to bind that charge over to the adult court. The court also lacked jurisdiction as to the charge of attempted murder because that charge “was never presented to the juvenile court and [it was] not ‘rooted in the acts’ that were the subject of the juvenile complaint. Furthermore, in reviewing the facts, this act was a different course of conduct that was not properly bound over by the juvenile court. [Appellant’s] juvenile complaint only involved his shooting and killing of the victim \* \* \* the two courses of conduct are separate and distinct, even though they occurred on the same day and at the same time.”

## 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

**In re: S.I.G., 2023-Ohio-2912**

Juvenile; SYO

**Full Decision:**

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2023/2023-Ohio-2912.pdf>

**In adjudication for rape and accompanying SYO specification, the juvenile court erred in invoking the stayed adult portion of appellant's SYO sentence. Pursuant to R.C. 2152.14(E)(1), although appellant was more than 14 years old, he did not have criminal charges pending against him; and he had not been admitted to a DYS facility. He had been placed on probation, with a condition being that he complete sex offender treatment at Butler County Juvenile Rehabilitation Center which was not a DYS facility, but a community corrections facility. Prison sentence of 10 years to life vacated.**

**Supreme Court of Ohio**

*Nothing to report.*

**Sixth Circuit Court of Appeals**

*Nothing to report.*

**Supreme Court of the United States**

*Nothing to report.*