Appellate Court Decisions –Week of 11/13/23

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

First Appellate District of Ohio

***State v. Morris*, C-230108**

Suppression; *Miranda*

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

In state's appeal, trial court did not err in granting appellee's motion to suppress his statements made during a police interrogation. COA holds that appellee's right to counsel under the Sixth Amendment of the U.S. Constitution and Article I, Section 10 of the Ohio Constitution attached at his arraignment which "marked the start of adversarial judicial proceedings * * *." Further, the parties agree that a defendant may waive the right to counsel under the Sixth Amendment at an interrogation, see *Montejo v. Louisiana*, 556 U.S. 778, 129 S.Ct. 2079, 173 L.Ed.2d 955 (2009). However, as a matter of first impression, COA determines that the trial court was correct in finding that *Montejo's* holding is not consistent with the right to counsel found in the Ohio Constitution. Just as Kentucky, West Virginia, and Kansas have rejected *Montejo* on state constitutional grounds, so does the First District COA. Finally, state failed to address the Ohio constitutional issues at the trial court level, even when given an opportunity to by the trial court.

This is a very important decision on this issue of first impression, rejecting the *Montejo* decision based upon state constitutional grounds.

Second Appellate District of Ohio

***State v. Tolson*, 2023-Ohio-3734**

PRC

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2023/2023-Ohio-3734.pdf

Because appellant had finished his prison sentence and been released from prison, "the trial court can no longer issue a nunc pro tunc entry to correct the PRC portion of [appellant's] judgment entry, because it cannot be 'accomplished prior to the defendant's completion of his prison term.' *Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, at

¶ 24." Although appellant should have been subject to five years of mandatory PRC, the court's three-year mandatory PRC sentence cannot now be corrected.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

***In re Z.P.*, 2023-Ohio-3767**

Court costs

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2023/2023-Ohio-3767.pdf

In state's appeal, trial court did not err in ordering state to pay subpoena costs after the state dismissed the complaint against appellee after the prosecutor presented no reason to explain why it filed an amended complaint so late, adding a charge. Juv.R. 17(D)(1) permits a court to assess such costs.

Sixth Appellate District of Ohio

Nothing to report.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Hatchell*, 2023-Ohio-3713**

Sentencing; Reagan Tokes

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-3713.pdf

Trial court erred in failing to advise appellant of all the required advisements pursuant to R.C. 2929.19(B)(2)(c); case remanded for court to provide appellant such advisements.

The trial court also erred in sentencing appellant to 48 months for abduction and 48 months for WUD. Both those offenses were third-degree felonies which carried a maximum of 36-month prison terms. Case remanded for court to resentence appellant on those two offenses.

***Massoud v. Pretel*, 2023-Ohio-3811**

Writ of habeas corpus

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-3811.pdf

Writ of habeas corpus is granted and petitioner ordered to be released from jail. Petitioner posted bond and complied with all conditions of bond for five months. After petitioner filed a request for a competency evaluation and a NGRI plea, the trial court erred by remanding him into custody and denying him bail. "[T]he statutory scheme governing these evaluations provides no justification for the trial judge's actions. Nothing in R.C. 2945.37 or 2945.371, governing hearings and evaluations on a defendant's competency, states that a defendant must be confined in jail in order for a competency evaluation to occur."

***Cleveland v. Hatchell*, 2023-Ohio-3792**

Weight of the evidence; aggravated menacing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-3792.pdf

Appellant's conviction for aggravated menacing was against the weight of the evidence where "the victim's actions and responses were not of a person who has a subjective belief that [appellant] was going to cause him serious physical harm."

Ninth Appellate District of Ohio

***State v. Brodie*, 2023-Ohio-3743**

Sentencing; Reagan Tokes; ineffective assistance of appellate counsel

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2023/2023-Ohio-3743.pdf

In application to reopen appellant's appeal, appellant counsel was ineffective for failing to challenge appellant's indefinite prison sentence imposed pursuant to Reagan Tokes. The sentence imposed by the trial court was contrary to law since appellant's offense occurred prior to the effective date of Reagan Tokes; therefore, he should have been sentenced to a definite prison term. State concedes error.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

***State v. Amin*, 2023-Ohio-3761**

Plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2023/2023-Ohio-3761.pdf

"[T]rial court's advisement regarding the maximum penalty was wholly deficient inasmuch as it communicated contradictory information to [appellant] without any effort to explain the significance of definite and indefinite sentencing under the Reagan Tokes law." Plea vacated and case remanded.

***State v. Murray*, 2023-Ohio-3762**

Ineffective assistance of counsel

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2023/2023-Ohio-3762.pdf

Appellant's trial counsel was ineffective for failing to file an affidavit of indigency to waive the mandatory fine prior to sentencing, and the court then imposed a $5,000 fine. "[T]here [was] a reasonable probability the trial court would not have imposed a fine" if such an affidavit had been filed.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.