Appellate Court Decisions –Week of 12/11/23

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

First Appellate District of Ohio

***State v. Sanders*, C-230131**

Sentencing; PRC and no-contact order

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

In conviction for robbery, a third-degree felony, the trial court erred when it sentenced appellant to a 24-month prison term and ordered a no-contact order; a no-contact order is a community control sanction which cannot be imposed when an offender is also given a prison sentence. Trial court also erred in advising appellant his PRC was discretionary rather than mandatory. Case remanded to so advise appellant and to remove the no-contact order from the sentence.

Second Appellate District of Ohio

***State v. Ray*, 2023-Ohio-4157**

Community control violation; sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2023/2023-Ohio-4157.pdf

After trial court properly revoked appellant's community control sanctions, the 30-month prison sentence was "contrary to law because the trial court relied on inaccurate information about his criminal history at sentencing * * * [and] erroneously found that he had a prior conviction for a felony sex offense." In fact, appellant had no prior criminal convictions. Case remanded for trial court to consider appellant's "accurate criminal history * * *."

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

Nothing to report.

Eighth Appellate District of Ohio

***State v. Bilah*, 2023-Ohio-4070**

Drug possession; weight

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-4070.pdf

Conviction for F1 drug possession was not supported by sufficient evidence where testimony only established the weight of fentanyl at 19.07 grams which was below the 20 gram threshold for a felony of the first degree. Also, vials containing melted snow contained an unknown amount of fentanyl. As "melted snow is not meant to be consumed as part of fentanyl, the water weight should not count toward the total weight of the controlled substance in this case." Case remanded for trial court to enter a conviction for a felony of the second degree and sentence appellant accordingly.

***State v. Hayes*, 2023-Ohio-4119**

Consecutive sentences

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-4119.pdf

Consecutive sentences totaling 71 and one-half years after appellant pled guilty to various offenses including involuntary manslaughter, WUD, CCW, felonious assault, trafficking, and aggravated robbery were modified where "the record clearly and convincingly does not support the trial court's proportionality finding in support of an aggregate sentence of 71 and one-

half years * * * [therefore, COA is] authorized by R.C. 2953.08(G)(2) to increase, reduce, or modify the sentences in this case. *Gwynne IV*, Slip Opinion No. 2022-Ohio-4607, at ¶ 29. Case remanded for modification of prison sentence to 33-49.5 years.

What is interesting is the COA recognized the reconsideration by the OSC of *Gwynne*, but did not consider it binding authority, as it was a plurality decision.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

***Brust v. Ohio Parole Bd.*, 2023-Ohio-4104**

Parole

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2023/2023-Ohio-4104.pdf

Declaratory judgment action against the Ohio Parole Board filed by appellants, who are inmates incarcerated in Ohio prisons, was erroneously dismissed by the trial court. Appellants challenged the Board's "'policy of absolute confidentiality' and non-disclosure concerning written statements made by victims' families or representatives that are presented to the Board for purposes of the full board hearing." Appellants alleged that this policy violated their "due process right to parole decisions based on accurate information [which] necessarily includes a right to know the allegations offered against them during the parole process, including allegations offered in writing by victims or victims' representatives." The trial court's decision to grant the Board's Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief could be granted was error, as "appellants succeeded in pleading a justiciable controversy to support their complaint for declaratory action."

***State v. Clinkscale*, 2023-Ohio-4146**

Judicial release

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2023/2023-Ohio-4146.pdf

In state's appeal, trial court did not err in granting judicial release to appellant. Although appellant's jail-time credit could not be applied to reduce his prison term for the firearm specification, there was no such prohibition that the credit could not be applied to the underlying crime. Therefore, appellant was eligible for release.

Eleventh Appellate District of Ohio

***State v. White*, 2023-Ohio-4092**

Sufficiency; involuntary manslaughter

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2023/2023-Ohio-4092.pdf

"[C]onviction * * * for Involuntary Manslaughter with a predicate offense of Corrupting Another with Drugs is not supported by sufficient evidence. Although appellant did furnish drugs to a third-party, who provided those drugs to the victim, appellant did not knowingly furnish the victim with drugs." Appellant discharged as to that offense.

Trial court also erred when it sentenced appellant to 36 months for a felony of the fourth degree where the maximum sentence is 18 months.

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.