

Appellate Court Decisions –Week of 1/16/24

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

First Appellate District of Ohio

Not a criminal case, but interesting one out of the First District.

In re L.E.S., E.S., N.S., C-220430 & C-220436

Legal recognition of same-sex parent

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

“The more difficult question presented to this court on appeal is whether the same-sex consenting partner of a woman subject to nonspousal artificial insemination can be recognized as the legal parent of the child(ren) conceived as a result of the nonspousal artificial insemination where the parties were never married but would have been at the time of the child(ren)’s conception had they legally been able to do so and have the marriage recognized in their home state of Ohio * * * we hold that such a partner should be recognized as a legal parent under Ohio law where it is affirmatively established that the parties would have been married at the time of the child(ren)’s conception but for Ohio’s unconstitutional ban on same-sex marriage. *See In re Domestic Partnership of Madrone*, 271 Or.App. 116, 128, 350 P.3d 495 (2015).”

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

State v. Ping, 2023-Ohio-4608

Court-appointed counsel fees

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2023/2023-Ohio-4608.pdf>

Trial court erred in imposing court-appointed counsel fees be assessed against appellant as part of his sentence, as such fees are not permitted to be assessed as costs. *See State v. Taylor*, 163 Ohio St.3d 508, 2020-Ohio-6786 and R.C. 2941.51.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

State v. Carswell, 2023-Ohio-4574

Postconviction relief

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2023/2023-Ohio-4574.pdf>

Trial court erred in failing to hold a hearing on appellant’s postconviction petition, claiming ineffective assistance of counsel by his trial counsel “for failing to investigate and challenge DNA evidence through expert testimony.”

State v. Henderson, 2023-Ohio-4576

Costs of confinement and court-appointed counsel fees

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2023/2023-Ohio-4576.pdf>

Trial court erred in imposing the costs of confinement and court-appointed counsel fees without addressing them at the sentencing hearing. Such costs are vacated.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

State v. Smith, 2023-Ohio-4642

Allied offenses/merger

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-4642.pdf>

In convictions for GSI, trial court committed plain error when it failed to merge two of the counts as allied offenses. Both offenses “were committed simultaneously with the same purpose (sexual gratification) and stemmed from a singular incident of sexual contact.”

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

Nothing to report.

Supreme Court of Ohio

Another 4-3 decision.

State v. Johnson, 2024-Ohio-124

Postconviction petition; untimely and successive

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/o/2024/2024-Ohio-124.pdf>

Postconviction relief—R.C. 2953.21 and 2953.23—Recantation evidence—Trial court could have no jurisdiction to entertain untimely, successive petition for postconviction relief unless petitioner established (1) that he was unavoidably prevented from timely discovering that victim had doubts about victim’s trial testimony and (2) that he would not have been convicted but for constitutional error at trial — R.C. 2953.23 requires a petitioner to submit evidence of specific facts beyond supporting

affidavit's date to explain why petitioner was unable to timely obtain an affidavit from recanting witness—A conviction based on false testimony is not a constitutional violation unless the state had knowledge of testimony's falsity.

But see dissent by Donnelly, joined by Brunner and Stewart:

I have emphasized that “[w]hen postconviction petitioners seeking new trials provide evidence outside the trial-court record that potentially undermines the theory of guilt that was used to convict them, courts should hold hearings on the petitions as a regular practice.” *Hatton*, 169 Ohio St.3d 446, 2022-Ohio-3991, 205 N.E.3d 513, at ¶ 43 (Donnelly, J., concurring); see also *Bunch* at ¶ 51; *Bethel*, 167 Ohio St.3d 362, 2022-Ohio-783, 192 N.E.3d 470, at ¶ 72 (Donnelly, J., dissenting); *State v. Miller*, ___ Ohio St.3d ___, 2023-Ohio-3448, ___ N.E.3d ___, ¶ 62 (Donnelly, J., dissenting).

Johnson’s November 2020 petition for postconviction relief articulates operative facts showing that the eyewitness-identification evidence that was crucial to the determination of Johnson’s guilt at trial may have been false. I personally think that this conclusion alone merits closer review of Johnson’s petition, given that mistaken eyewitness identifications are thought to be “ ‘responsible for more wrongful convictions than all other causes combined,’ ” *United States v. Brownlee*, 454 F.3d 131, 142 (3d Cir.2006), quoting A. Daniel Yarmey, *Expert Testimony: Does Eyewitness Memory Research Have Probative Value for the Courts?*, 42 *Canadian Psychol.* 92, 93 (May 2001). But regardless, Johnson’s petition also provided evidence establishing a prima facie claim that he was unavoidably prevented from discovering Keith’s recantation prior to R.C. 2953.21’s deadline, and the facts established in the recantation affidavit present a cognizable claim that Johnson’s convictions were predicated on the state’s violations of his constitutional rights.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.