

Appellate Court Decisions –Week of 1/2/24

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

First Appellate District of Ohio

State v. Martin, C-230236

Merger

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

Trial court committed plain error in failing to merge appellant's convictions for trafficking in marijuana and possession of marijuana as allied offenses where both counts were based on the discovery of marijuana in appellant's car by the police officer.

Second Appellate District of Ohio

Nothing to report.

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. Pete, 2023-Ohio-4406

Delay in sentencing

Full Decision:

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

[4406.pdf](#)

Trial court erred in sentencing appellant to a 30-month prison term. The delay of two and one-half years between appellant's plea hearing and sentencing hearing was unreasonable and divested the trial court of jurisdiction to impose the sentence. Appellant had been held in federal prison but had repeatedly requested that he be sentenced in Monroe County, Ohio. "Neither the trial court nor the state made any effort to sentence [a]ppellant despite the fact that both entities were aware that he was in federal prison in Pennsylvania, he signed a waiver of extradition at the plea hearing, and he requested to be sentenced remotely." Conviction remained valid but sentence vacated.

State v. Street, 2023-Ohio-4405

NGRI/double jeopardy

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2023/2023-Ohio-4405.pdf>

Trial court erred in holding a bench trial where there was no valid jury waiver. However, the NGRI verdicts were voidable, not void because the trial court still had subject-matter jurisdiction to hear the case. Therefore, "[t]he NGRI verdicts are vacated as [a]ppellant did not waive his right to a jury trial. Further, the Order entering the NGRI verdicts constitutes an acquittal, that is, a finding by the trial court there was insufficient evidence to prove the mens rea element of the charged crimes, as well as a factual finding that necessarily establishes the criminal defendant's lack of criminal culpability. Therefore, jeopardy attached to the Order and double jeopardy prohibits [a]ppellant's retrial."

Eighth Appellate District of Ohio

State v. Coleman, 2023-Ohio-4418

Consecutive sentences

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-4418.pdf>

Trial court erred in imposing consecutive sentences where it failed to make the requisite statutory findings pursuant to R.C. 2929.14(C)(4). Case remanded for court to consider whether consecutive sentences are appropriate and to make the findings to support those sentences if they are

appropriate.

State v. Evans, 2023-Ohio-4416

Sentencing/nunc pro tunc entry

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-4416.pdf>

Trial court imposed a sentence of a flat 10 years at the sentencing hearing after appellant pled guilty to one count of rape; the court issued a sentencing entry with that same flat 10-year sentence. Court then erred by issuing a nunc pro tunc entry with a minimum 10-year sentence and a maximum 15-year sentence because “[i]ssuing a nunc pro tunc entry to impose an indefinite sentence under the Reagan Tokes Law not imposed at the sentencing hearing is improper.” Case remanded for resentencing.

State v. Dunn, 2023-Ohio-4413

Sufficiency; GSI

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-4413.pdf>

In convictions for two counts of GSI, inter alia, the state presented insufficient evidence to support the conviction on one of those counts. “[Appellant] did not manipulate the mail carrier’s clothing, he did not tell her to do anything or prevent her from doing anything, and he did not threaten her. [Appellant’s] action of grabbing the mail carrier’s breast was merely the force of the act itself.” However, the evidence did support a conviction for the lesser-included offense of sexual imposition. Case remanded for resentencing.

Ninth Appellate District of Ohio

State v. Simbo, 2023-Ohio-4404

Plea

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2023/2023-Ohio-4404.pdf>

Appellant’s guilty plea was not knowingly, intelligently, nor voluntarily

made where the “trial court failed to inform him that he was subject to mandatory time and was ineligible to be placed on community control.” Trial court also incorrectly advised appellant that he faced a maximum sentence of 16 years when he, in fact, faced a maximum sentence of 18 years. “[T]rial court completely failed to comply with Crim.R. 11(C)(2)(a) and there is no need for [appellant] to demonstrate prejudice.” Case remanded.

State v. Kolvek, 2023-Ohio-4402

Community control violation/jurisdiction

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2023/2023-Ohio-4402.pdf>

Appellant filed a motion to vacate his “void sentences,” arguing “the trial court lacked jurisdiction to reimpose his sentences for violating community control because he had already completed the 24-month community control period by the time he was sentenced on January 29, 2016.” COA holds that the trial court erred by construing appellant’s motion as an untimely petition for post-conviction relief “because he did not allege the denial of a constitutional right.” Therefore, “he was denied a substantive ruling on his motion to vacate * * *.” Case remanded for trial court to consider the merits of appellant’s motion to vacate his sentences.

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

State v. Randolph, 2023-Ohio-4753

Criminal trespass

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2023/2023-Ohio-4753.pdf>

[4753.pdf](#)

“R.C. 2911.21—Criminal trespass—Property law—Landlords, tenants, tenants’ guests—A landlord or landlord’s agent, without first reserving authority to do so in lease agreement, may not prohibit a person from entering onto the property such that a tenant is prohibited from inviting that person onto the property—A landlord cedes possessory interests in leased property to the tenant such that the tenant may invite onto the property a person whom the owner has sought to ban from the premises, provided that no language to the contrary appears in lease agreement and preserves the landlord’s possessory interests.”

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.