Appellate Court Decisions –Week of 12/18/23

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

First Appellate District of Ohio

***State v. Morris*, C-220651 & C-220652**

Consecutive sentences

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

Although trial court made the proper findings at the sentencing hearing to support its imposition of consecutive sentences, it failed to incorporate those findings in the sentencing entry. Case remanded to correct this error with a nunc pro tunc entry.

Second Appellate District of Ohio

***State v. Debord*, 2023-Ohio-4204**

Impeachment

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2023/2023-Ohio-4204.pdf

Trial court plainly erred in permitting the state to impeach its own witness using a prior inconsistent statement. Pursuant to Evid.R. 607(A), "there was no showing of affirmative damage to the [s]tate * * * '[a]ffirmative damage' does not exist when a witness denies knowledge or fails to remember. *Combs*, 94 Ohio App.3d at 299, 640 N.E.2d 863; *Risden*, 2d Dist. Montgomery No. 22930, 2010-Ohio-991, at ¶ 74. The trial court's comment, 'If [Wilson] doesn't remember, that's a basis to impeach,' directly contradicts this principle." However, COA finds the error harmless and affirms convictions for, inter alia, aggravated murder.

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

***State v. Klorer*, 2023-Ohio-4242**

Jail-time credit

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2023/2023-Ohio-4242.pdf

Trial court failed to properly calculate jail-time credit for appellant. Case remanded for court to properly compute the credit for time served.

Seventh Appellate District of Ohio

***State v. Simmons*, 2023-Ohio-4246**

Consecutive sentences; Reagan Tokes

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2023/2023-Ohio-4246.pdf

"[T]rial court failed to make the findings required to impose consecutive sentences at the sentencing hearing" pursuant to R.C. 2929.14(C)(4); court also "failed to advise [a]ppellant of the requisite notifications pursuant to R.C. 2929.19(B)(2(c)." Case remanded for resentencing.

Eighth Appellate District of Ohio

Nothing to report.

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

***State v. Halbert*, 2023-Ohio-4471**

Consecutive sentences

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2023/2023-Ohio-4471.pdf

Trial court failed to the make the statutory findings on the record required to impose consecutive sentences, pursuant to R.C. 2929.14(C)(4). Case remanded for resentencing for the court to make the findings and incorporate them in the sentencing entry.

***State v. H.M.G.*, 2023-Ohio-4588**
***State v. H.M.G.*, 2023-Ohio-4589**

Record sealing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2023/2023-Ohio-4588.pdf
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2023/2023-Ohio-4589.pdf

Trial court erred in denying appellant's application to seal a 20-year-old disorderly conduct conviction. Court did not permit appellant to present evidence of rehabilitation nor did it allow her the opportunity to present evidence that her interests in sealing are at least equal to or outweigh the government's interest in maintaining those records - especially as the state did not object to the sealing. Case remanded to allow appellant to present such evidence.

Trial court also erred when it denied appellant's application to seal a 19-year-old dismissed charge of underage possession of alcohol. As proper rehabilitation is not a requirement for the sealing of dismissed charges, the trial court erred in relying on appellant's perceived lack of rehabilitation. Also, the court did not give appellant the opportunity to present evidence that her interests in sealing are at least equal to or outweigh the government's interest in maintaining those records - especially as the state

did not object to the sealing. Case remanded to allow appellant to present such evidence.

Supreme Court of Ohio

Well - another 4-3 decision. But this time, in favor of the defense.

***State v. Swazey*, 2023-Ohio-4627**

Motion to dismiss indictment

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2023/2023-Ohio-4627.pdf

Crim.R. 12(C)(2)—A trial court may consider facts beyond four corners of indictment to rule on merits of a defendant's pretrial motion to dismiss under Crim.R. 12(C)(2) when motion challenges whether law set forth in indictment applies to defendant—Defendant who pleaded guilty did not waive constitutional right to challenge on appeal trial court's dismissal of his Crim.R. 12(C)(2) motion to dismiss challenging state's ability to prosecute.

Appellant filed a motion to dismiss the indictment against him for failure to pay child support where his daughter had reached 18 years of age and graduated from high school. OSC affirmed COA decision and held that 1) a trial court "may look beyond the four corners of the indictment" and consider evidence beyond the face of the indictment when deciding a pretrial motion to dismiss "if the matter is capable of determination without trial of the general issue;" and 2) appellant's "guilty plea did not constitute a waiver of his ability to challenge on appeal the denial of his motion to dismiss." OSC notes that it has previously "held that most appellate issues are waived when a defendant pleads guilty because a guilty plea is a reliable admission of factual guilt. [*State v. Wilson*, 58 Ohio St.2d 52, 54, 388 N.E.2d 745 (1979)] * * *. However, when a constitutional challenge alleges that the state may not convict the defendant no matter how thoroughly his factual guilt is established, the defendant may bring that challenge despite having pleaded guilty. *Id.* at 54-55. Constitutional violations that go to the ability of the state to prosecute, regardless of factual guilt, may be raised on appeal from a guilty plea. *Id.* at 55."

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.