

Appellate Court Decisions – Week of 1/29/24

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

First Appellate District of Ohio

Nothing to report.

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

State v. Haji, 2023-Ohio-4807

Competency

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2023/2023-Ohio-4807.pdf>

After defense counsel raised the issue of appellant’s competency, trial court erred in accepting appellant’s guilty plea to OVI offense without conducting a competency hearing. R.C. 2945.37.

Fourth Appellate District of Ohio

State v. Riffle, 2023-Ohio-4808

Plea; right to be present

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2023/2023-Ohio-4808.pdf>

Trial court failed to “sufficiently comply with the Ohio Rules of Criminal Procedure, including Crim.R. 43.” The court held a remote arraignment, plea hearing, and sentencing hearing without obtaining a waiver, either in writing or on the record, of appellant’s right to be present; and there was also no notice of a remote hearing in the record. Conviction and sentence for theft reversed, and case remanded.

State v. Rossiter, 2023-Ohio-4809

Ineffective assistance of counsel

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2023/2023-Ohio-4809.pdf>

In convictions for GSI where trial court erroneously classified appellant as a Tier III sex offender, trial counsel was ineffective for advocating for the correct tier classification as a Tier II. State concedes error; case remanded for correct classification.

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. Norris, 2023-Ohio-4788

Consecutive sentences

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-4788.pdf>

Trial court plainly erred in imposing consecutive sentences without making “the requisite disproportionate findings under R.C. 2929.14(C)(4) according to *Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659.”

State v. Dickerson, 2023-Ohio-4787

Sufficiency; tampering with records and forgery

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2023/2023-Ohio-4787.pdf>

State did not present sufficient evidence to support appellant's convictions for tampering with records and forgery where it failed "to prove beyond a reasonable doubt that [appellant] signed certificates of registration containing false information with the purpose to defraud or knowing that he was facilitating a fraud * * *."

Ninth Appellate District of Ohio

State v. Stultz, 2023-Ohio-4754

Reopen appeal/ineffective assistance of appellate counsel

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2023/2023-Ohio-4754.pdf>

In pro se application to reopen appeal where COA did reopen appeal, "prior appellate counsel rendered ineffective assistance by failing to ensure that the police cruiser video was made part of the record on appeal, which precluded this Court from reviewing the merits of his argument as to whether the trial court erred by admitting it into evidence." However, COA finds that trial court did not err by admitting the video, as video showed appellant in an obviously intoxicated state, and the state had the burden to prove that he was intoxicated.

Akron v. Alvarez, 2023-Ohio-4770

Contempt

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2023/2023-Ohio-4770.pdf>

Appellant was convicted of possession of a vicious dog, and trial court ordered her two dogs euthanized as a danger to the community. Subsequently, appellant was not able to surrender both dogs to the animal warden, and court held a contempt of court hearing where it found appellant to be in contempt of court. However, as appellant was never provided with written notice of the contempt charges, and her defense counsel had objected to the contempt hearing on that basis, this failure "constituted reversible error by the trial court." Judgment of contempt reversed, and case remanded.

Akron v. Calhoun, 2023-Ohio-4840

Verdict form

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2023/2023-Ohio-4840.pdf>

In conviction for M4 disorderly conduct, the jury verdict form did not specify the degree of the offense, nor did it include any aggravating elements. Therefore, appellant could only have been found guilty of MM disorderly conduct since it was the least degree of the offense charged. R.C. 2945.75(A)(2).

Tenth Appellate District of Ohio

State v. Todd, 2023-Ohio-4847

Sex offender classification

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2023/2023-Ohio-4847.pdf>

In state's appeal, trial court did not err in denying state's motion for a nunc pro tunc entry stating appellant's sex offender classification and granting appellant's petition challenging his sex offender reclassification. In 1999, appellant had pled to several sex offenses, including rape, and agreed to a sentence of 10 years. However, neither of his sentencing entries mentioned his classification as a sexual predator under Megan's Law. After appellant was released from prison in 2007, "with no mention of a judicially determined classification in the judgment entries," by operation of law he was classified a sexually oriented offender with a 10-year reporting requirement. When he was reclassified as a Tier III sex offender in 2008, he filed a petition contesting that reclassification. The trial court failed to rule on that petition for 11 years. Finally, in 2020, the trial court granted appellant's petition that he could not be classified under the AWA; it also denied the state's motion to issue a nunc pro tunc entry adding a classification as a sexual predator. COA affirmed, holding that appellant was wrongfully reclassified so he should be classified under Megan's Law. The COA also stated that since there was no sex offender classification in the original entries, they were not final appealable orders. The concurring opinion made clear that this meant the state could seek an order classifying appellant as a sexual predator because he had agreed to it in his original plea and sentencing hearings. However, the concurring opinion argued

there was a final appealable order and res judicata should apply to bar the state from arguing that appellant should be classified a sexual predator.

Should be interesting to see what occurs next, as the trial court did not want to classify appellant as a sexual predator, as he had served his prison sentence and his reporting requirements had ended.

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

State v. Gable, 2024-Ohio-293

Consecutive sentences

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2024/2024-Ohio-293.pdf>

Although “trial court included all the necessary findings under R.C. 2929.14(C)(4) to support the imposition of consecutive sentences in its July 6, 2023 sentencing entry * * *, [it] failed to make the required necessity and proportionality findings at the sentencing hearing.” Case remanded for resentencing.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.