Appellate Court Decisions –Week of 8/5/24

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

First Appellate District of Ohio

***In re: L.M.*, C-240048 & 49**

Juvenile; competency evaluations

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

Juvenile court erred in refusing to order a competency evaluation of appellant "even though he presented a reasonable basis for doing so." In holding that appellant "had not rebutted the presumption of competency by a preponderance of the evidence, and as a result had not shown a reasonable basis to order a competency evaluation . . . the juvenile court applied the incorrect legal standard under the juvenile competency statute in making its decision of whether to order a competency evaluation of [appellant] and abused its discretion in refusing to order a competency evaluation." This presumption of competency pursuant to R.C. 2152.52(A)(2) only "applies in making a determination as to whether the child has a lack of mental capacity . . . [a]ccordingly, the presumption is inapplicable to the court's determination of whether a reasonable basis exists to order an evaluation. The juvenile court's review is only whether there is a reasonable basis for an evaluation. [Appellant] does not have to rebut a presumption of competency to be eligible for an evaluation."

***In re: D.A.*, C-240056**

Juvenile; commitment

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

In committing appellant to DYS "for a minimum period of 12 months to a maximum period not to exceed his attainment of the age of 21 years . . . the juvenile court exceeded its statutory authority and violated his right to due process when it committed [him] to DYS for a minimum term that exceeded the minimum term stated in the statute . . . R.C. 2152.16(A)(1)(e) provides that if child is adjudicated a delinquent child for committing an act that would be a felony of the third, fourth, or fifth degree if committed by an adult, the juvenile court may commit the child to the legal custody of DYS [only] for an indefinite term consisting of a minimum period of six months and a maximum period not to exceed the juvenile's attainment of 21 years of age."

***In re: J.H.*, C-240052, 53, 54, & 55**

Juvenile; commitment

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

In adjudication for tampering with evidence, a third-degree felony, juvenile court erred in committing appellant to DYS for a minimum term of 12 months. "Pursuant to R.C. 2152.16(A)(1)(e), the minimum term of commitment for a juvenile found to be delinquent for an offense that would constitute a third-degree felony if committed by an adult is six months." And court's attempt to correct the commitment with a nunc pro tunc entry was invalid; such entry "did not reflect the dispositional order that the juvenile court imposed at the disposition hearing in that it altered the minimum term of commitment. The nunc pro tunc entry is therefore invalid, and we accordingly do not consider it. *See State v. Hendrix*, 1st Dist. Hamilton No. C-230310, 2024-Ohio-230, ¶ 16 ('A nunc pro tunc entry may be used to correct a sentencing order, as long as the nunc pro tunc entry reflects what the court actually did, and is not an attempt to modify the court's judgment.')."

***State v. Tucker*, C-240186**

Sufficiency; physical control and refusal

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

State did not present sufficient evidence to support appellant's convictions for having physical control of a vehicle while under the influence and refusal of a chemical test. For the conviction of physical control, "the state failed to establish a nexus between [appellant's] condition and a particular drug of abuse. *Compare State v. Fritsch*, 2023-Ohio-2676, ¶ 16-18 (1st Dist.) (state provided sufficient evidence that defendant consumed a combination of alcohol and drugs of abuse to support OVI conviction including defendant's admission to drinking, discovery of marijuana pipe and sticky note with methamphetamine residue in defendant's car, and defendant's outlandish behavior and erratic driving)." As for the conviction of refusing to submit to a chemical test, the COA first noted that "'the refusal to consent to testing is not, itself, a criminal offense.' *State v. Hoover*, 2009-Ohio-4993, ¶ 21. The essential elements for a conviction under R.C. 4511.19(A)(2) include (1) operation of a vehicle while under the influence of alcohol or drugs, (2) a prior OVI conviction within 20 years of the current violation, and (3) a refusal to submit to chemical testing. *State v. Cunningham*, 2018-Ohio-912, ¶ 16 (12th Dist.), citing *Hoover* at ¶ 13." As there was no evidence presented that appellant had a prior OVI conviction, an essential element of

the charge was not proven. State concedes error. Convictions vacated, and appellant discharged from further prosecution.

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

***State v. Sines-Riley*, 2024-Ohio-2860**

Sufficiency; damages/fair market value and merger

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2024/2024-Ohio-2860.pdf

In conviction for multiple offenses of theft, vandalism, breaking and entering, and possession of criminal tools, "[s]tate failed to prove that the catalytic converters he stole had a fair market value of $1,000 or more, which is the level at which a misdemeanor theft rises to a fifth-degree felony . . . Where the [s]tate offers evidence of the insurance company's payment for the cost of replacing the stolen property it fails to meet its burden to prove fair market value." And the trial court plainly erred by failing to give the proper jury instructions on value. Trial court also erred by failing to merge the vandalism offense with the theft offense that related to the vandalism of the truck from which the catalytic converters were stolen. Case remanded for trial court to reduce the theft offenses from fifth-degree felonies to first-degree misdemeanors; and to merge the vandalism offense with one of the theft offenses.

Fifth Appellate District of Ohio

***State v. Brown*, 2024-Ohio-2895**

PRC; res judicata

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2024/2024-Ohio-2895.pdf

In conviction for aiding or abetting rape where appellant completed his prison sentence and then filed a motion to vacate his PRC, trial court erred by re-imposing the five years of PRC at a hearing held after appellant's release. At appellant's original sentencing hearing, the court failed to inform him "of the requirements of post release control, nor of the possible ramifications for violations thereof." Thereafter, the state failed to file an appeal or cross-appeal, challenging the improper advisement. Therefore, the court could not later correct the PRC after the appellant had been released. See *State v. Bates*, 2022-Ohio-475 (The Supreme Court held that when a trial court does not properly advise a defendant regarding the requirements of PCR and the possible consequences for violating said requirements, it is the State that is aggrieved since it invalidates that portion of the sentence. The State did not appeal of that issue and, as a result, the PCR sanction was voidable. When the defendant sought to set aside the PCR sanction, the failure to appeal the trial court's omission regarding the requirements of PCR was subject to res judicata. Accordingly, the PCR sanction could not be corrected via a "re-sentencing" hearing).

Sixth Appellate District of Ohio

***State v. Richardson*, 2024-Ohio-2840**

Sentencing; costs

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2024/2024-Ohio-2840.pdf

Trial court erred by imposing the costs of supervision (appellant was sentenced to prison so there would be no supervision costs) and confinement in the sentencing entry where it did not impose such costs at the sentencing hearing.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

Nothing to report.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

***State v. Morgan*, 2024-Ohio-2875**

Forfeiture of gun

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2024/2024-Ohio-2875.pdf

Conviction for aggravated menacing affirmed where appellant pointed a gun at police officer. However, trial court plainly erred in ordering the forfeiture of the firearm because it lacked authority to issue such order. "R.C. 2981.02(A)(1)(c)(ii) subjects an instrumentality used in the commission of a misdemeanor to forfeiture only if specifically authorized by a section of the Ohio Revised Code . . . R.C. 2903.21, which sets forth the offense of aggravated menacing, does not specifically authorize forfeiture of the handgun involved in his case. [See] *State v. McMeen*, 3d Dist. No. 13-14-26, 2014-Ohio-5482, ¶ 16 (finding firearm not subject to forfeiture under R.C. 2981.02(A)(3) where misdemeanor offenses charged under city ordinance did not specifically authorize forfeiture) and *State v. Poirier*, 2d Dist. No. 28849, 2021-Ohio-1743, ¶ 35 (reviewing court observing '[w]e have found no authority permitting a trial court to order the forfeiture of firearms in the absence of statutory authority, and the parties have not directed us to any')."

***State v. Foster*, 2024-Ohio-2924**

Postconviction petition

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2024/2024-Ohio-2924.pdf

Trial court erred when it denied appellant's first petition for postconviction relief without holding a hearing where appellant presented a colorable issue that his trial counsel was ineffective.

Eleventh Appellate District of Ohio

***State v. Simpson*, 2024-Ohio-2865**

Jury waiver

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2024/2024-Ohio-

2865.pdf

Trial court erred "by proceeding with a bench trial after a jury demand was made." Court "had no jurisdiction to proceed with a bench trial . . . ."

Twelfth Appellate District of Ohio

***State v. Ward*, 2024-Ohio-2858**

PRC/consecutive sentences

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2024/2024-Ohio-2858.pdf

Trial court erred in imposing PRC "in the sentencing entry because the court failed to advise [appellant] at the sentencing hearing of the term of supervision, whether postrelease control was discretionary or mandatory, and the consequences of violating postrelease control." Trial court also "failed to make the requisite R.C. 2929.14(C)(4) findings at the sentencing hearing" despite including them in the sentencing entry. 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.