Appellate Court Decisions –Week of 9/9/24

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

***State v. Dingman*, 2024-Ohio-3327**

Waiver of counsel

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2024/2024-Ohio-3327.pdf

In conviction for misdemeanor theft after a bench trial, appellant did not knowingly, intelligently, nor voluntarily waive his right to counsel in open court nor in a written waiver. "The trial court failed to explain the nature of the charges, the statutory offenses included within them, the range of allowable punishments, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter." Conviction affirmed, but sentence vacated.

And see COA's explanation of a split in the districts on the issue of the remedy:

"The question becomes the appropriate remedy for Dingman's uncounseled conviction on a petty offense. We have previously held that the remedy in such a case is to vacate the term of incarceration, including any suspended sentence. *Conard*, 2024-Ohio-1906, at ¶ 23 (2d Dist.) (citing other cases). 'We have explained that, while the failure to obtain a valid waiver of counsel as required by Crim.R. 44(B) affects the trial court's ability to impose a sentence of confinement, it does not affect the validity of a defendant's pleas or its findings on those pleas.' *Id.*, citing *State v. Lanton*, 2003-Ohio-4715, ¶ 23 (2d Dist.). Rather, the conviction remains valid. *Id.*

As we noted in *Conard*, 'several appellate districts have concluded, based on *State v. Bode*, 144 Ohio St.3d 155, 2015-Ohio-1519, 41 N.E.3d 1156, that this approach is no longer correct.' *Id.* at ¶ 24. 'They hold that the conviction itself is defective and must be reversed.' *Id.*, citing *Euclid v. Hedge*, 2022-Ohio-464, ¶ 27 (8th Dist.), *State v. Ott*, 2017-Ohio-521, ¶ 8 (9th Dist.), and *State v. Wamsley*, 2016-Ohio-2885 (5th Dist.). In *Conard*, we declined to

reconsider our position and affirmed Conard's conviction but modified his sentence to remove his jail term. Id. at ¶ 26. We will do the same here."

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

***State v. Pettiford*, 2024-Ohio-4447**

Consecutive sentences

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2024/2024-Ohio-4447.pdf

Trial court erred in imposing consecutive sentences without making the proper findings at the sentencing hearing pursuant to R.C. 2929.14(C)(4). Case remanded for resentencing.

***State v. Walker*, 2024-Ohio-4469**

Supervision and confinement costs

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2024/2024-Ohio-4469.pdf

Trial court erred in imposing an enforceable civil judgment as part of the sentence for supervision and confinement costs rather than a separate civil matter with a separate entry. *See State v.* Taylor, 2020-Ohio-6786. Imposition of costs reversed, and case remanded for "further reconsideration of the imposition of costs."

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. Bergstresser*, 2024-Ohio-3299**

Restitution hearing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2024/2024-Ohio-3299.pdf

Trial court erred in failing to hold a restitution hearing after appellant's counsel disputed the amount of restitution. R.C. 2929.18(A)(1). Case remanded for such a hearing.

***State v. Reillo*, 2024-Ohio-3307**

Weight of the evidence; rape/GSI

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2024/2024-Ohio-3307.pdf

Appellant's convictions for rape and GSI were against the weight of the evidence. "[T]he only evidence of the crime, which was by and large limited to the bare elements of each charged offense, came from E.C.'s testimony, which given the timeline and E.C.'s age, was understandably riddled with uncertainties. The State's case nonetheless entirely depended on the truthfulness of a witness, but the assessment of a witness's credibility incorporates two distinct concepts: 'the witness' truthfulness and the witness' ability to accurately perceive and communicate that about which the witness is testifying.' *Kravitz v. Long Island Jewish-Hillside Med. Ctr.*, Community Health Program, Inc., 113 A.D.2d 577, 582 (N.Y. App. 1985). A witness can be perceived as being truthful, but that alone does not establish credibility in the legal sense, especially as it pertains to the State's burden to overcome the presumption of innocence . . . the credibility of the State's case . . . relie[d] on conclusory allegations of sexual misconduct having occurred over a decade earlier. [Appellant] also highlights the impact on the credibility of the State's case given the length of delay between the events and the disclosure." The lack of detail of what allegedly transpired, with the few details being "obtained through leading questions" called into question "whether the witness was agreeing with the question or

independently recollecting the events." Convictions reversed, and case remanded for a new trial.

***State v. Lucas*, 2024-Ohio-4496**

Plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2024/2024-Ohio-4496.pdf

Appellant's guilty plea was not knowing, intelligently, nor voluntarily made where the trial "court failed to advise [appellant] of the maximum potential penalty he faced as a result of his plea agreement." Crim.R. 11(C)(2)(a). Plea vacated, and case remanded.

Ninth Appellate District of Ohio

***State v. Kolvek*, 2024-Ohio-4473**

Reimposition of sentence/void sentence

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2024/2024-Ohio-4473.pdf

Appellant was sentenced to 3 years and six months; he was judicially released approximately 8 months early and placed on community control for 24 months. Subsequently, he was convicted of drug charges and sentenced to 12 years. The trial court also found that appellant had violated his community control and reimposed his suspended sentence for the Original cases. However, at the time of the reimposition, "the suspended portion of his sentence in the Original Cases had expired." Therefore, the trial court was without jurisdiction to reimpose the sentence. Case remanded.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

***State v. Brown*, 2024-Ohio-4450**

Consecutive sentences

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2024/2024-Ohio-4450.pdf

Trial court erred in imposing consecutive sentences without making the proper findings at the sentencing hearing pursuant to R.C. 2929.14(C)(4). Case remanded for resentencing.

***State v. Norvell*, 2024-Ohio-4443**

Record sealing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2024/2024-Ohio-4443.pdf

Trial court erred in denying appellant's application to seal the record of his fourth-degree misdemeanor DC conviction. There was "no requirement set forth within the plain language of R.C. 2953.32(D)(1) that mandated [appellant] to demonstrate the extent to which the record of his disorderly conduct conviction had been detrimental on his life, his children's lives, and/or his business before the record of his conviction could be sealed by the trial court. To the extent that the trial court held otherwise, such decision was error and shall not be replicated again upon this court's remand."

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.