Appellate Court Decisions –Weeks of 10/14/24, 10/21/24, and 10/28/24

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

First Appellate District of Ohio

***State v. Conley*, 2024-Ohio-4985**

Presentence motion to withdraw guilty plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2024/2024-Ohio-4985.pdf

In conviction for WUD following guilty plea, trial court erred in denying appellant's presentence motion to withdraw his plea without conducting a meaningful "hearing to determine if there [was] a legitimate and reasonable basis for the withdrawal of the plea." Conviction reversed, and case remanded for court to hold a hearing "to consider all of the relevant factors."

***State v. Craig*, C-240380**

Statutory speedy trial

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

In conviction for misconduct at an emergency, trial court erred when it denied appellant's motion to dismiss for statutory speedy trial violation. "R.C. 2945.73(B)(2)(a) provides that 'a person charged with [a] misdemeanor shall be discharged if the person is held in jail in lieu of bond awaiting trial on the pending charge[ ] [f]or a total period equal to the maximum term of imprisonment which may be imposed for the most serious misdemeanor charged[.]' Subsection (B)(3) additionally specifies that this discharge bars further prosecution for the same conduct." Appellant had been held in pretrial detention for 33 days which was longer than the 30-day maximum sentence she could have received for the fourth-degree misdemeanor. Conviction vacated, and appellant discharged.

***State v. Collins*, C-240011**

Sufficiency/degree of theft offense/restitution

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

In conviction for third-degree felony theft from a person in a protected class, appellant's father, state presented sufficient evidence only to convict appellant of a fourth-degree felony. "[T]he total amount of misappropriated funds falls below the $7,500 threshold required for a third-degree felony," but did "exceed the $1,000 minimum required to constitute a *fourth-degree* felony under the same statute." Conviction affirmed as modified, sentence vacated, and case remanded.

Trial court also plainly erred in ordering appellant to pay restitution to her father's nursing homes because they were not victims under the statute – only her father was. Restitution awarded to nursing homes vacated.

***State v. Keese*, 2024-Ohio-5075**

Allied offenses

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2024/2024-Ohio-5075.pdf

In conviction for multiple charges, including two counts of trafficking, trial court erred in imposing separate prison sentences for such counts, as they were allied offenses. State concedes error that offenses should have merged.

***In re: K.C*, C-240207**

Restitution

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

In conviction for RSP, trial court erred when it refused to hold a restitution hearing after appellant objected to the restitution amount. State concedes error. Restitution order vacated, and case remanded for a restitution hearing.

***In re: M.R*, C-240293**

Restitution

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

In conviction for RSP of an automobile, trial court erred when it imposed restitution for the cost to repair the stripped steering column and broken window. "The record supports that the repair expenses reflected in the Midas invoice flowed as a natural consequence from the commission of the theft offense. *See, e.g., State v. Littlefield*, 2003-Ohio-863 (4th Dist.). The

record does not establish that these damages were the direct and proximate results of appellant's receipt of the stolen vehicle. *See Yerkey* at ¶ 17." Restitution vacated as to those costs.

Second Appellate District of Ohio

***State v. Fader*, 2024-Ohio-4921**

Jury instructions

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2024/2024-Ohio-4921.pdf

In conviction for voyeurism, trial court erred in failing to instruct the jury on the definition of "reasonable doubt" and "beyond a reasonable doubt." This error "warrants reversal under either structural error or plain error analysis." Conviction reversed, and case remanded.

***State v. Adams*, 2024-Ohio-4920**

PRC

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2024/2024-Ohio-4920.pdf

Trial court erred when it failed to notify appellant "about her possible post-release control obligations and the consequences of violating post-release control. The State concedes error." Case remanded solely for the trial court to provide the notifications.

***State v. Harbut*, 2024-Ohio-4811**

Jail-time credit/forfeiture

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2024/2024-Ohio-4811.pdf

In convictions for WUD and tampering, trial court erred when it failed to calculate appellant's jail-time credit and include such credit in the sentencing entry. Court also erred when it ordered forfeiture of a firearm in "the absence of a forfeiture determination by the jury . . . ." State concedes error. Case remanded to calculate credit, and forfeiture order vacated.

***State v. Rupert*, 2024-Ohio-5027**

Sufficiency; possession of drug abuse instrument

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2024/2024-Ohio-5027.pdf

In conviction for possessing drug abuse instruments i.e.: hypodermic needles, state presented insufficient evidence that appellant had used the needles to "unlawfully administer or a dangerous drug or to prepare a dangerous drug for unlawful administration or use. R.C. 2925.12(A)." Conviction vacated, and appellant discharged.

***State v. Powell*, 2024-Ohio-5122**

Jail-time credit

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2024/2024-Ohio-5122.pdf

"[T]rial court erred by failing to make a determination on the record about whether [appellant] was entitled to any jail-time credit. The State concedes error . . . ."

Third Appellate District of Ohio

***State v. Lopez*, 2024-Ohio-4967**

Prosecutorial misconduct

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2024/2024-Ohio-4967.pdf

In convictions for OVI and failure to disclose where were tried to a jury, "the prosecutor committed multiple instances of misconduct during closing arguments. [COA] find[s] that in this case, [appellant's] substantial rights were affected by the prosecutor's comments, particularly because the jury was never properly instructed on the definition of reasonable doubt." However, the failure to yield and DUS convictions which were tried to the bench are affirmed, as those convictions occurred prior to the prosecutor's closing arguments in the jury trial. OVI and failure to disclose convictions reversed, and case remanded.

Fourth Appellate District of Ohio

***State v. Crumpton*, 2024-Ohio-5064**

Jury verdict

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2024/2024-Ohio-5064.pdf

In convictions for, inter alia, trafficking in heroin, that conviction is reversed where the jury verdict form was missing on juror's signature, rendering the verdict non-unanimous.

Fifth Appellate District of Ohio

***State v. Langston*, 2024-Ohio-5069**

Restitution

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2024/2024-Ohio-5069.pdf

Trial court erred in ordering appellant to pay restitution in a post sentencing order. Court lacked jurisdiction to "further act in the criminal matter once if filed its sentencing entry . . . that made no mention of restitution. State concedes error. Restitution order vacated.

Sixth Appellate District of Ohio

***State v. Black*, 2024-Ohio-5134**

Reagan Tokes

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2024/2024-Ohio-5134.pdf

Trial court erred when it failed to provide appellant at sentencing with all the mandatory advisements required by R.C. 2929.19(B)(4), Reagan Tokes Law. Case remanded to provide such notifications.

Seventh Appellate District of Ohio

***State v. Harrison*, 2024-Ohio-5016**

Sentence

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2024/2024-Ohio-5016.pdf

After COA reversed and vacated appellant's conviction and sentence for RSP on the grounds of insufficient evidence, trial court and/or state failed to vacate the sentence. COA orders limited remand for trial court to vacate the sentence.

***State v. Yerkey*, 2024-Ohio-4849**

Concurrent sentences; jail-time credit

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2024/2024-Ohio-4849.pdf

Trial court erred in failing to apply appellant's 44 days of jail-time credit to both of his concurrent 10-month sentences pursuant to *State v. Fugate*, 2008-Ohio-856.

Eighth Appellate District of Ohio

***State v. Karr*, 2024-Ohio-4895**

Mandatory fine

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2024/2024-Ohio-4895.pdf

In conviction for drug trafficking and possession, trial court erred by finding [appellant] indigent and unable to pay a fine and contemporaneously imposing that fine." Fine vacated.

***State v. T.S.*, 2024-Ohio-4898**

Amenability/bindover

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

4898.pdf

In convictions for attempted murder and tampering with evidence following discretionary bindover, juvenile court erred in failing "to make certain findings required for a discretionary transfer under R.C. 2152.12(B)(3). Further, there is insufficient evidence in the record to support a finding, by a preponderance of the evidence, that [appellant] is not amenable to care or rehabilitation within the juvenile system." Convictions and bindover order vacated, and case remanded to juvenile court.

Ninth Appellate District of Ohio

***State v. Karr*, 2024-Ohio-4826**

Waiver of jury trial

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2024/2024-Ohio-4826.pdf

In conviction for animal cruelty, trial court lacked jurisdiction to hold a bench trial after appellant had filed a written jury demand. Although defense counsel filed a document purported to be a withdrawal of such jury demand, it "was not signed by [appellant], did not contain the language stated in R.C. 2945.05, and was not made in open court." Convictions vacated, and case remanded.

Tenth Appellate District of Ohio

***State v. Seymour*, 2024-Ohio-5179**

Sufficiency; involuntary manslaughter/corrupting another with drugs

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2024/2024-Ohio-5179.pdf

In convictions for involuntary manslaughter and corrupting another with drugs, the state failed to present sufficient evidence that the heroin supplied by appellant was the "but-for" cause of death of the decedent where the cause of death was the "combined ingestion of heroin, kratom, Ritalin, and Benadryl." Convictions vacated, and appellant discharged as to those offenses.

Eleventh Appellate District of Ohio

***State v. Bielfelt*, 2024-Ohio-5055**

Marsy's Law/diversion

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2024/2024-Ohio-5055.pdf

In appeal by victim to trial court's order placing defendant/appellee in a diversion program, the appeal is dismissed as moot since defendant/appellant had completed diversion, the trial court had vacated the guilty finding, and the record was sealed. "Once a defendant has completed all requirements under a diversion program, double jeopardy prevents the defendant from being prosecuted again and no relief could be afforded, rendering the issue moot." And victim's appeal of the record sealing is dismissed, as "[n]either Marsy's Law nor R.C. 2953.33 grants a victim any rights to be notified of, or object to, a court's ordering a defendant's record sealed if the finding of guilt is vacated."

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

***State v. Smith*, 2024-Ohio-5030**

Venue

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2024/2024-Ohio-5030.pdf

***"Criminal law—Venue—Court of appeals' judgment summarily reversed under S.Ct.Prac.R. 7.08(B)(3) based on the authority of* State v. Headley. "**

OSC determines that the "State presented sufficient circumstantial evidence in this case to establish that the charged offenses occurred in Hamilton County, and the First District Court of Appeals erred when it held otherwise based on a flawed view that direct evidence was required to prove venue."

***State v. Kyles*, 2024-Ohio-5038**

Companion animal

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2024/2024-Ohio-5038.pdf

"Criminal law—R.C. 959.131—R.C. 959.131 defines 'companion animal' as including 'any' dog or cat—A dog or cat need not be 'kept' under R.C. 959.131's definition of 'companion animal' to be protected under R.C. 959.131 [animal cruelty]."

***State v. Echols*, 2024-Ohio-5088**

Other acts/witness intimidation

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2024/2024-Ohio-5088.pdf

"Criminal law—Other-acts evidence—Witness intimidation—Evidence of witness intimidation must be properly analyzed under Evid.R. 404(B) when offered as proof of an "other crime, wrong, or act"—Witness-intimidation evidence relevant for a nonpropensity purpose must still be subjected to Evid.R. 403(A) balancing to determine whether its probative value is substantially outweighed by danger of unfair prejudice, confusion of issues, or misleading jury."

In considering admissibility of witness-intimidation evidence, OSC finds "no error in the admission of this evidence. It was properly admitted for a purpose other than showing Echol's 's character; it showed Echol's consciousness of his guilt. *See* Evid.R. 404(B)(2). And the probative value of the evidence was not 'substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury,' Evid.R. 403(A)."

***State ex rel. Cincinnati Enquirer v. Bloom*, 2024-Ohio-5029**

Other acts/witness intimidation

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2024/2024-Ohio-5029.pdf

"Mandamus—Prohibition—Open-courts provision of Ohio Constitution prohibits closing a juvenile-delinquency proceeding to public without making an individualized determination balancing the interests at stake—

Mandatory sealing of juvenile-delinquency records under R.C. 2151.356 unconstitutional—Writs granted."

***State v. Glover*, 2024-Ohio-5195**

Well, plurality decision at least as to the First Prop.

Consecutive sentences

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2024/2024-Ohio-5195.pdf

"Criminal law—Sentencing—R.C. 2929.14(C)(4)—Consecutive-sentence findings—R.C. 2953.08(G)(2)—Appellate review of consecutive sentences—Court of appeals' judgment reducing appellee's consecutive prison terms reversed and consecutive sentences imposed by trial court reinstated."

'Under R.C. 2929.14(C)(4), the 'consecutive-sentencing statute,' a trial court may impose consecutive sentences only if it makes certain findings. Under R.C. 2953.08(G)(2), the 'appellate-review statute,' an appellate court may modify or vacate the imposition of consecutive sentences when it 'clearly and convincingly finds' that 'the record does not support the sentencing court's findings.' The appellate court in this case did not properly apply the appellate-review statute, and the record does not justify its modification of the sentence that the trial court imposed."

But see dissent:

"Given the opportunity to clarify the law on consecutive sentencing under R.C. 2929.14, this court once again only muddies the waters. To be clear, while there are four votes to reverse the judgment of the First District Court of Appeals—which was set out in a thorough and well-reasoned opinion below—the lead opinion's legal reasoning has not garnered enough votes to announce any rule of law, at least with respect to the State's first proposition of law. And while today's decision is by no means a paragon of clarity, lower courts can be sure that there are four members of this court who believe that trial courts must consider whether the aggregate sentence imposed is disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, see opinion concurring in judgment and concurring in part at ¶ 67 (agreeing that courts must consider the aggregate prison term under the disproportionality prong of the statute).

Further, I would hold that the correct standard of review of the record

and the trial court's consecutive-sentence findings is de novo, for the reasons I explained in *State v. Gwynne*, 2022-Ohio-4607, ¶ 18-23 ("*Gwynne IV*"), vacated on reconsideration, 2023-Ohio-3851 ("*Gwynne V*"). Accordingly, I dissent."

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.