Appellate Court Decisions –Week of 11/11/24

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

First Appellate District of Ohio

***State v. Harris*, C-240105, C-240106 & C-240107**

Postconviction relief; ineffective assistance of counsel

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

In convictions for multiple offenses in several cases where appellant received a four-year prison term pursuant to an agreed guilty plea and sentence, trial court erred in denying appellant's petition for postconviction relief without an evidentiary hearing. COA holds that appellant's "postconviction claims were not barred by res judicata and that she was entitled to an evidentiary hearing on two of her three postconviction claims. Those two claims asserted that her trial counsel was constitutionally ineffective for failing to investigate and assert speedy-trial claims under the Agreement on Detainers ("IAD"), *see* R.C. 2963.30, and the Sixth Amendment to the United States Constitution . . . [appellant] submitted evidence outside the record to raise an issue of ineffective assistance of counsel in failing to assert speedy-trial claims under the IAD and the Sixth Amendment, and thus, demonstrated substantive grounds for relief entitling her to a hearing with respect to those two claims."

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

***State v. Henry*, 2024-Ohio-5364**

PRC

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2024/2024-Ohio-5364.pdf

In convictions for drug offenses, the most serious being a felony of the first degree, prior to sentencing appellant absconded for five years. Upon his arrest, trial court erred in imposing a term of five years of PRC after appellant completed his six-year prison sentence. Because the terms of

PRC had been amended during the time appellant was absent, his sentencing occurred after those amendments became effective. Therefore, "pursuant to R.C. 1.58, the trial court was required to apply a newer version of R.C. 2967.28 that had taken effect prior to the time of [appellant's] sentencing hearing." Instead of the five-year term of PRC, court should have imposed a term of not less than two years, but not more than five years. And that fact that the delay in sentencing was precipitated by appellant's actions did not change "the plain and unambiguous language of R.C. 1.58(B), *supra*, [which] required the trial court in these cases to impose post-release control terms in accord with the version of R.C. 2967.28 that was in effect at the time of [appellant's] sentencing hearing."

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

***State v. Elkins*, 2024-Ohio-5351**

Judicial bias

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2024/2024-Ohio-5351.pdf

In conviction for felonious assault, trial court erred in failing to disqualify itself when a family member of the court, who was the lead detective on the case, testified on behalf of the state, and no waiver of the conflict was obtained from appellant. Appellant only learned of this relationship after he was sentenced; therefore, he would have been unable to file an affidavit of disqualification with the OSC "regarding a relationship of which he was not aware." COA "further find[s] an unconstitutional potential for bias, where, as here, the judge's family member is a testifying officer and the judge does not inform the parties of the relationship during the pendency of the trial court case so that the issue of bias can be addressed. [Court] . . . find[s] it noteworthy that the judge himself, in a separate case, granted [appellant's] motion for recusal on the basis of his relationship with Detective Ortolani." Conviction and sentence reversed, and case remanded.

Seventh Appellate District of Ohio

Nothing to report.

Eighth Appellate District of Ohio

***State v. Bissell*, 2024-Ohio-5317**

Sufficiency; felony murder and failure to comply

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2024/2024-Ohio-5317.pdf

In convictions for felony murder, with the predicate offense being felonious assault, and failure to comply, those convictions were not supported by sufficient evidence. There was no evidence that a lawful order or direction was given to appellant which is required to support a conviction for failure to comply; therefore, that conviction is reversed, and appellant discharged from further prosecution.

The felony murder conviction "require[d]evidence that a person caused the death of another as a proximate result of committing or attempting to commit an offense of violence that is a felony of the first or second degree, in this case felonious assault under R.C. 2903.11(A)(1) and/or (A)(2). Felonious assault requires evidence that the defendant either knowingly caused serious physical harm to another or that the defendant knowingly caused or attempted to cause physical harm to another by means of a deadly weapon or dangerous ordnance. R.C. 2903.11(A)(1) and (2), respectively." The evidence presented demonstrated that appellant acted only recklessly, not knowingly. Therefore, there was insufficient evidence to support the conviction for felony murder predicated on felonious assault. However, there was sufficient evidence to support a conviction for the lesser included offense of involuntary manslaughter predicated on the offense of reckless assault. Involuntary manslaughter is typically a felony of the third degree but is a felony of the first degree when the predicate offense is a felony; and reckless assault is a felony when the victim is a firefighter performing his duty. Conviction for felony murder vacated but modified to reflect a conviction for involuntary manslaughter, a felony of the first degree.

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

Nothing to report.

Eleventh Appellate District of Ohio

***State v. Lockwood*, 2024-Ohio-5370**

Ineffective assistance of counsel/motion to vacate plea

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2024/2024-Ohio-5370.pdf

Trial court erred in denying appellant's presentence motion to vacate his guilty plea to importuning and disseminating matter harmful to juveniles. "[C]onsidering the evidence relating to the representation of counsel and his unwillingness to represent [appellant] at trial, as well as [appellant's] statements contesting his guilt and desire to enter a plea, [COA] find[s] the trial court should have permitted him to withdraw his plea." State concedes error.

Twelfth Appellate District of Ohio

***State v. Corrales-Baez*, 2024-Ohio-5358**

Crim.R. 16(K)/late disclosure of expert report

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2024/2024-Ohio-5358.pdf

In conviction for drug possession, "trial court abused its discretion by modifying the Crim.R. 16(K) expert disclosure deadline [of 21 days] at the state's request . . . ." The state provided the drug analysis report to the defense 14 days before trial, in clear violation of the rule's requirement of 21 days. And there was never a showing of good cause by the state "for not inquiring about and requesting the drug analysis report until a month after the Laboratory released it and for not timely disclosing the record to defense counsel once it obtained it as required by Crim.R. 16(K)." Conviction reversed, and case remanded.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

Nothing to report.

Supreme Court of the United States

Nothing to report.