Appellate Court Decisions –Week of 11/18/24

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

First Appellate District of Ohio

***In re: B.B*, C-230637**

Record sealing

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

In conviction for drug offenses, "trial court lacked jurisdiction to vacate the order sealing [appellant's] record because the court had no jurisdiction to take any action after it had sealed her records." Order granting appellant's application to seal her record reinstated.

***State v. Jones*, C-220007**

Suppression; IAC

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

In appellant's first appearance in the COA in 2023, First District held that he had received ineffective assistance of counsel for the failure of trial counsel to challenge the constitutionality of a consent search and protective sweep of a home. It did not, however, reverse the multiple drug convictions but instead issued a limited remand to give the parties the opportunity to fully litigate the issues that previous trial counsel had missed. Upon appeal by the state, the OSC remanded the case for the COA to "enter a judgment that affirms, modifies, or reverses the trial court's judgment of conviction and that decides all of the assignments of error that are not made moot by its ruling on another assignment of error."

On remand, First District reverses the convictions, again holding that appellant received ineffective assistance of trial counsel because trial counsel (1) was aware that suppressing the contents of the safe was critical to [appellant's] defense, (2) had a reasonable basis for asserting that Gaston's consent to search the property was involuntary and the officers' protective sweep of the property was not justified, and (3) either failed to investigate these issues or disregarded them. *See Jones I* at ¶ 7-21. Accordingly, we determine[] that [appellant's] counsel provided unconstitutionally deficient representation and that a reasonable probability existed that but for the deficient representation, the outcome of the trial would have been different. *Id.* at ¶ 21."

Second Appellate District of Ohio

***State v. Reed*, 2024-Ohio-5412**

Postconviction/DNA testing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2024/2024-Ohio-5412.pdf

Although trial court was correct in denying appellant's application for DNA testing pursuant to R.C. Chapter 2953 because such testing would not be "outcome determinative, " it erred when it applied the "outcome determinative" test to appellant's request to have DNA testing done at his own expense. "Based on the plain language of R.C. 2953.84, the 'outcome determinative' test contained in these provisions cannot be used to limit or affect any requests for DNA testing at the applicant's expense made outside R.C. 2953.71 to 2953.81. *See also* 2005 Ohio Atty.Gen.Ops. No. 2005-009." Trial court's decision reversed, and case remanded.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

***State v. Allen*, 2024-Ohio-5386**

State's appeal/restitution; jurisdiction/leave to appeal

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2024/2024-Ohio-5386.pdf

In state's appeal where the state asserted that the trial court erred in "failing to order a restitution amount of the actual loss suffered by the victim . . . State did not request leave to appeal and the issue presented is not one that the State may appeal as of right pursuant to R.C. 2945.67(A)." Therefore, the COA lacked jurisdiction to "address the merits of the State's arguments . . . ."

Fifth Appellate District of Ohio

Nothing to report.

Sixth Appellate District of Ohio

***State v. Gregory*, 2024-Ohio-5420**

Postconviction petition

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2024/2024-Ohio-5420.pdf

Although denial of appellant's postconviction petition in one case was correct, trial court erred in denying postconviction petition in second case where appellant's claim concerning a vehicle search was based on evidence outside the record; therefore, it was not barred by res judicata.

Seventh Appellate District of Ohio

***State v. Howze*, 2024-Ohio-5447**

Forfeiture

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2024/2024-Ohio-5447.pdf

In convictions for multiple drug offenses, "the trial court erred in failing to undertake a proportionality review before ordering the forfeiture of Appellant's automobile." State concedes error. Case remanded.

***State v. Croley*, 2024-Ohio-5448**

Reagan Tokes

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2024/2024-Ohio-5448.pdf

In convictions for multiple offenses, including felonious assault, "the trial court miscalculated the maximum sentence on count three, felonious assault." The maximum term should have been 11 years, not 12 years. Case remanded for resentencing.

Eighth Appellate District of Ohio

Nothing to report.

Ninth Appellate District of Ohio

***State v. Riddlebarger*, 2024-Ohio-5356**

Transcript; inaudible

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2024/2024-Ohio-5356.pdf

In conviction for domestic violence, court reporter was unable to provide a transcript of the trial because the audio recording was "very difficult to hear . . . and [the court reporter] could not hear the judge or accusing witness clearly at times . . . a transcript . . . would result in many 'inaudible' lines . . . [and t]he words that she could transcribe would be 'completely devoid of context and the substance of what was being said.'" Due to the lack of an adequate record, the conviction was reversed, as appellant "has established that he has been prejudiced by the inadequacy of the trial recording."

Interestingly, the COA concluded that the case must be reversed instead of remanded to the trial court to determine if the "record can be settled" as the OSC had done previously in *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197 (1980) and *State v. Jones*, 71 Ohio St.3d 293 (1994). That conclusion was based upon the fact that "[t]he Ohio Supreme Court has recently clarified, however, that Ohio courts of appeals have only three options when entering judgment. *State v. Jones*, 2024-Ohio-2719, ¶ 16-20. Specifically, under Rule 12(A), a court of appeals may "affirm, modify, or reverse the judgment or final order appealed . . . ." *Id.* at ¶ 16, quoting App.R. 12(A)(1)(a). The Court vacated a 'limited remand' that the First District Court of Appeals had ordered and remanded 'the case to the court of appeals for it to comply with App.R. 12 by entering a judgment that affirms, modifies or reverses the trial court's judgment[.]' *Id.* at ¶ 20." The Ninth District seemed a bit grumpy about the *Jones'* decision.

Tenth Appellate District of Ohio

***State v. Greer*, 2024-Ohio-5396**

Competency

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2024/2024-Ohio-5396.pdf

Appellant was deemed incompetent/unrestorable, and the trial court retained jurisdiction after "finding by clear and convincing evidence that [appellant] had committed the offense of felonious assault." Subsequently, Twin Valley Behavioral Hospital recommended that appellant be granted conditional release to his daughter's or wife's home. A second opinion by a forensic center concluded that conditional release was appropriate, but only to a secure, skilled nursing facility or living center. Because the opinions disagreed as to the placement of appellant, the trial court erred when it ordered appellant be granted conditional release to the secure facility instead of to the home of one of appellant's family members. The trial court believed the opinions to be consistent; however, "because the trial court appears to have misconstrued or misunderstood the evidence before it, [COA] conclude[s] the court erred and the appropriate remedy is to remand this matter for a rehearing where the trial court can evaluate the record evidence properly before it."

Eleventh Appellate District of Ohio

***State v. Barry*, 2024-Ohio-5267**

Community control/expired

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2024/2024-Ohio-5267.pdf

Trial court erred when it imposed a 180-day jail sentence for a violation of appellant's community control "after his community-control sentence had already expired." The "issuance of a [probation] warrant does not extend the period of community control." State concedes error.

***State v. Tyers*, 2024-Ohio-5436**

Sentencing/restitution/jurisdiction

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2024/2024-Ohio-5436.pdf

Trial court erred when it converted "its order of restitution to a civil judgment" after appellant had completed his sentence. Court did not have jurisdiction to modify his financial sanctions after he completed his probation.

Twelfth Appellate District of Ohio

Nothing to report.

Supreme Court of Ohio

Nothing to report.

Sixth Circuit Court of Appeals

***United State v. Johnson*, No. 23-5344**

Suppression; traffic stop extended

Full Decision:
http://www.opn.ca6.uscourts.gov/opinions.pdf/24a0254p-06.pdf

District court erred in denying appellant's motion to suppress the search of his automobile and the firearm found during that search. After appellant was stopped for speeding, the police officer "extended the stop beyond the time necessary to issue a traffic citation," for a K9 sniff of the automobile without reasonable suspicion necessary to justify such an extension. "Ultimately, 'this case lacks any of the stronger indicators of criminal conduct' typically necessary to establish reasonable suspicion."

Supreme Court of the United States

Nothing to report.