



OHIO

CRIMINAL SENTENCING COMMISSION

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TO: Ohio Criminal Sentencing Commission

FROM: Scott Shumaker, Criminal Justice Counsel

DATE: 03/18/21

RE: Ohio Supreme Court Decisions 2017-2020 Summary Document

Commission staff have worked to compile a comprehensive list of the criminal decisions issued by the Ohio Supreme Court since 2017. The document provides a brief summary of each case, references the code section, rule, or constitutional provisions addressed, and further details any subsequent actions taken either directly as a result of the decision or otherwise.

There are some cases for which legislative action may be appropriate. References to proposed reforms on the topic, such as the work of the Commission, proposals of the Ohio Criminal Justice Recodification Committee (CJRC) and the Justice Reinvestment 2.0 initiative (JRI 2.0) are also included. The final document will soon be distributed and published on our website.

What follows are central themes present in these decisions:

1. STATUTORY COMPLEXITY AND INCREASING ADMINISTRATIVE BURDEN

The provisions of Ohio’s sentencing laws have grown increasingly complex in the twenty-five years since the enactment of Senate Bill 2’s “truth in sentencing” scheme. We now operate under four different sentencing schemes for felonies – definite terms, non-life indefinite terms, life sentences subject to release by parole, and capital cases. Issues arising with pleas and sentencing have led to substantial litigation of “unforced errors” as practitioners attempt to navigate the complicated statutory web of the criminal code.

The complexity is highlighted by the decisions in [State v. Bishop, 2018-Ohio-5132](#)ⁱ, [State v. Hudson, 2020-Ohio-3849](#)ⁱⁱ, and [State v. Harper, 2020-Ohio-2913](#)ⁱⁱⁱ, all of which relate to required notices and imposition of post-release control conditions at sentencing. This issue alone has led to innumerable appellate cases, be they related to a plea colloquy, the sentencing hearing, or the journal entry. A further example is the required advisements in the non-life felony definite sentencing scheme of 132 GA Senate Bill 201, currently the subject of pending litigation before the Supreme Court of Ohio.

Notably, the recent work of the Commission to develop the Uniform Sentencing Entry and companion documents will assist practitioners in application of the law, but that effort should be coupled with the earnest effort to streamline and simplify the Revised Code. The Commission has long advocated for the need for simplification of Ohio’s criminal laws, and these decisions reiterate the need for holistic change.



2. APPELLATE COURT REVIEW OF CRIMINAL SENTENCES

Appellate review of felony sentences was a lynchpin of the sentencing scheme enacted in SB 2 nearly twenty-five years ago. Judges were guided toward the minimum term from felony ranges and findings were required to impose sentences beyond the minimum term. That requirement was buttressed by robust appellate review of those sentences as provided in RC 2953.08. With the *Foster* decision in 2006 striking the need for findings, the central premise of appellate review in SB 2 was upended.

We still see the effects of *Foster*, as illustrated in [State v. Gwynne, 2019-Ohio-4761^{iv}](#), [State v. Jones, 2020-Ohio-6729^v](#), [State v. McFarland, 2020-Ohio-3343^{vi}](#), and [State v. Patrick, 2020-Ohio-6803^{vii}](#). These cases illustrate a need for clarity in the procedural review of sentences, such as: What in the record should be reviewed for sentences imposed by the trial court? At what point do consecutive sentences become a de facto life term? Should the discretionary imposition of a “functional” life sentence or of life without parole be reviewable on direct appeal, or only subject to Eighth Amendment challenge? And are sentences throughout the state consistent and proportional, as required by the tenets of RC 2929.11 and 2929.12?

3. BALANCING STATUTORY CHANGE AND HISTORICAL LEGAL PRECEDENT

Finally, the decisions in [State v. Nelson, 2020-OHIO-3690^{viii}](#) and [State v. Castner, 2020-Ohio-4950^{ix}](#), reflect the conundrum of legislative enactment and practical application or implementation resulting in appellate litigation. These decisions echo the sentiment that criminal statutes and policies should be clear, concise, effective, and able to adapt to new challenges. Thus, there is a need for a broader, holistic and realistic discussion for sentencing structure and criminal justice policy in Ohio.

ⁱ [State v. Bishop, 156 Ohio St. 3d 156, 2018-Ohio-5132](#)

SUMMARY: The Court held that when a defendant on post-release control enters a guilty plea on a new felony, the trial court must inform that defendant during the Criminal Rule 11 colloquy that it is permitted by statute to terminate their existing post-release control and to sentence the defendant to a consecutive term of imprisonment for violating post-release control by committing a new felony.

REVISED CODE SECTIONS: Crim. R. 11, 2929.141

SUBSEQUENT ACTIONS AND RECOMMENDATIONS: Necessary advisements are included in the uniform entries, including good civics forms.

ⁱⁱ [State v. Hudson, Slip Opinion No. 2020-Ohio-3849](#)

SUMMARY: Defendant was sentenced to prison, and the initial sentencing entry failed to properly impose post-release control obligations. After having served their sentence, they appealed their sentence and placement on post-release control. Following the holding in *State v. Harper*, 2020-OHIO-2193, the Court held that the sentence was not void and therefore was barred by res judicata as it was not addressed on direct appeal.

REVISED CODE SECTIONS: RC 2931.03, RC 2967.28.

SUBSEQUENT ACTIONS AND RECOMMENDATIONS: Instructions to the Uniform Entries and attendant Method of Convictions and “Good Civics” forms will assist practitioners in avoiding these types of errors.



iii [State v. Harper, Slip Opinion No. 2020-Ohio-2913](#)

SUMMARY: In deciding an issue challenging improper imposition of post-release control made after a defendant's release from prison, the Court revisited its void-versus-voidable jurisprudence and held that improper imposition of post-release control does not render the sentence void and subject to collateral attack at any time, but rather voidable and therefore such issues must be addressed on direct appeal.

REVISED CODE SECTIONS: RC 2929.19, 2967.28

SUBSEQUENT ACTIONS AND RECOMMENDATIONS: Adoption of the Uniform Sentencing Entry and attendant templates will assist practitioners in avoiding these types of errors at the trial level.

iv [State v. Gwynne, 158 Ohio St.3d 279, 2019-Ohio-4761](#)

SUMMARY: Plurality decision where Court narrowly held that the 5th District Court of Appeals erred in considering the purposes and principles of sentencing in RC 2929.11 and 2929.12 when reviewing a large number of consecutive sentences – a 65 year stated prison term for a 55-year-old non-violent offender.

REVISED CODE SECTIONS: RC 2953.08

SUBSEQUENT ACTIONS AND RECOMMENDATIONS [Gwynne, McFarland, Jones]: The Commission has long supported efforts to refine RC 2953.08. After review of these cases, the Uniform Sentencing Entry Update Protocol group chose to include an optional section allowing judges to include the RC 2929.11 and .12 factors in the entry with the ability for courts to supplement the entry with any other relevant consideration.

v [State v. Jones, Slip Opinion No. 2020-Ohio-6729](#)

SUMMARY: Defendants appealed a ten-year sentence imposed for their involuntary manslaughter conviction following the death of a child in their care. The Eighth District found, pursuant to RC 2953.08(G)(2), that the length of the sentence was "contrary to law" in light of the purposes and principles of felony sentencing set forth in RC 2929.11. The Court held that RC 2953.08 does not allow this type of independent review or modification of felony sentences for compliance with RC 2929.11 or RC 2929.12. The Court also held that the language relied upon by the Eighth District from *State v. Marcum*, 2016-Ohio-1002 was dicta.

REVISED CODE SECTIONS: RC 2929.11, 2929.12, 2953.08

SUBSEQUENT ACTIONS AND RECOMMENDATIONS [Gwynne, McFarland, Jones]: The Commission has long supported efforts to refine RC 2953.08. After review of these cases, the Uniform Sentencing Entry Update Protocol group chose to include an optional section allowing judges to include the RC 2929.11 and .12 factors in the entry with the ability for courts to supplement the entry with any other relevant consideration.

vi [State v. McFarland, Slip Opinion No. 2020-Ohio-3343](#)

SUMMARY: Defendant challenged their convictions based on a sufficiency of the evidence argument where they were sentenced to life without parole for a conspiracy to commit aggravated murder and sentenced to life without parole. The Court affirmed the Eighth District holding that there was sufficient evidence to support the convictions.

REVISED CODE SECTIONS: US Const. Amend. 8, RC 2953.08, 2903.01

SUBSEQUENT ACTIONS AND RECOMMENDATIONS [Gwynne, McFarland, Jones]: The Commission has long supported efforts to refine RC 2953.08. After review of these cases, the Uniform Sentencing Entry Update Protocol group chose to include an optional section allowing judges to include the RC 2929.11 and .12 factors in the entry with the ability for courts to supplement the entry with any other relevant consideration.



vii [State v. Patrick, Slip Opinion No. 2020-OHIO-6803](#)

SUMMARY: The Court held that the prohibition on appeal of felony sentences for aggravated murder and murder set forth in RC 2953.08(D)(3) does not prohibit a defendant from appealing based on claimed violations of their constitutional rights. Defendant appealed a sentence of 33 years to life for an aggravated murder committed while they were age 17, and alleged the punishment was cruel and unusual in violation of the Eighth Amendment. The Court held that an extended sentence such as this is subject to the same scrutiny as a life without parole sentence, and that trial courts must consider the youth of juvenile offenders when they are sentenced as an adult. The case was remanded for resentencing for the trial court to make such considerations.

REVISED CODE SECTIONS: RC 2953.08, 2929.03, US Const. Amend. 8, Ohio Const. Art I. § 9

SUBSEQUENT ACTIONS AND RECOMMENDATIONS: Days before this decision was issued, the 133rd General Assembly passed SB 256, a bill barring the imposition of life without parole sentences for juvenile offenders. The bill also provides parole eligibility timelines for juveniles currently serving extended adult sentences and mandates that courts consider age-relevant factors in imposing sentences on such offenders. The bill was signed into law by the Governor January 9, 2021 and takes effect April 12, 2021.

viii [State v. Nelson, Slip Opinion No. 2020-Ohio-3690](#)

SUMMARY: The Court addressed the meaning of “technical violation” of community control under the RC 2929.15(B) probation violator caps. Defendant argued that any violation that is not a new felony is a “technical violation.” The Court disagreed, holding that the lack of a definition of the term gives courts discretion to determine what conduct constitutes a “technical violation” of community control, and that defendant’s violation of a no-contact order and subsequent misdemeanor conviction did not constitute a “technical violation.”

REVISED CODE SECTIONS: RC 2929.15

SUBSEQUENT ACTIONS AND RECOMMENDATIONS [Nelson, Castner]: Changes to RC 2929.15 made in 133 GA HB 1 impact these provisions and this line of cases. This is under consideration for updates to the Uniform Sentencing Entries and is a provision included in the study and reporting of the impact of HB 1 by the Commission per RC 181.27.

ix [State v. Castner, Slip Opinion No. 2020-Ohio-4950](#)

SUMMARY: Defendant appealed a twelve-month sentence after being removed from two court ordered drug treatment programs as a condition of community control, arguing that the violations were technical in nature and therefore limited his prison sentence to ninety days under RC 2929.15(B). The Court applied the analysis it set forth in *State v. Nelson*, 2020-Ohio-3690 and held that the court ordered treatment was a “substantive rehabilitative requirement specifically tailored to address” the defendant’s drug problems, and that the nature of the defendant’s violations (being kicked out of treatment for contacting underage girls using the treatment facility’s phone and computer), considered in light of his prior criminal history (sex offenses involving underage girls) rose above the level of a technical violation of community control.

REVISED CODE SECTIONS: RC 2929.15

SUBSEQUENT ACTIONS AND RECOMMENDATIONS [Nelson, Castner]: Changes to RC 2929.15 made in 133 GA HB 1 impact these provisions and this line of cases. This is under consideration for updates to the Uniform Sentencing Entries and is a provision included in the study and reporting of the impact of HB 1 by the Commission per RC 181.27.