

Juvenile Court Can Dismiss Sexual Crimes Committed by Young Children

In re D.S., Slip Opinion No. 2017-Ohio-8289

The rules of juvenile court allow a judge to dismiss criminal gross sexual imposition charges against a minor under age 13 who engages in sexual conduct with a child close in age, the Ohio Supreme Court ruled in 2017.

A Supreme Court majority opinion ruled that a Franklin County Common Pleas Court judge had the power to dismiss a delinquency charge against a boy who was 12 years old at the time he engaged in sexual conduct with another boy who was almost 10. In the Court's lead opinion, Justice William M. O'Neill wrote that Juvenile Rule 9(A) gives the juvenile court the power to end the criminal prosecution and order treatment at an early stage of the proceedings, instead of formal action.

Evidence Can Be Used When Police with Warrant Improperly Enter Premises

State v. Bembry, Slip Opinion No. 2017-Ohio-8114

If a police officer with search warrant violates Ohio's "knock-and-announce" law, the criminal evidence obtained during the search can still be used to prosecute the suspect.

A Supreme Court majority found the exclusionary rule, which is used to prevent the use of illegally obtained evidence, is not the appropriate remedy for a knock-and-announce violation.

The ruling allows the use of evidence collected by Boardman police who burst into the home of a suspected heroin dealer without announcing they had a warrant to search the apartment where he was living.

Writing for the Court majority, Justice William M. O'Neill explained the exclusionary rule was designed to protect against unconstitutional warrantless or illegal searches. The purpose of knock-and-announce is to protect the safety, property, and privacy of those on the premises "that can be destroyed by a sudden entrance."

“Suppressing evidence found during a warranted search of a home will not heal a physical injury, fix a door, or undo the shock of embarrassment when police enter without notice of their presence and purpose,” the opinion stated.

Court Resolves Appellate Conflict Regarding Sealing of Court Records

State v. Dye, Slip Opinion No. 2017-Ohio-7823

A trial court may seal the records in a case dismissed without prejudice prior to the expiration of the statute of limitations. The Supreme Court resolved a conflict between two district courts of appeals. In a majority opinion authored by Justice Terrence O’Donnell, the Court found that the section of the statute for sealing criminal case records, R.C. 2953.52(B)(4), does not require the expiration of the statute of limitations.

Ohio’s “Apology Statute”—Admissions of Fault when Coupled with Apologies Cannot Be Used in Lawsuits

Stewart v. Vivian, Slip Opinion No. 2017-Ohio-7526.

A health care provider’s statement of apology that expresses fault or admission of liability to a patient or the patient’s family cannot be admitted as evidence in a civil lawsuit against the provider. The Supreme Court ruled that “a statement expressing apology” means a statement expressing a feeling of regret for an unanticipated outcome of the patient’s medical care, and may include an acknowledgment that the patient’s care was substandard.

The ruling resolved a split among Ohio appeals courts that differed on whether the term “apology” excluded a provider’s apology that included an admission of fault.

The majority decision, written by Justice Sharon L. Kennedy, affirmed rulings by lower courts not to admit the statements of Dr. Rodney E. Vivian in a medical malpractice lawsuit brought against him by the family of a woman who committed suicide. The woman was under Vivian’s care at a Clermont County hospital.

The Court unanimously agreed that Ohio’s “apology statute,” R.C. 2317.43, shields apologies that include admissions of fault. However, two justices concluded that Vivian’s statements were not an apology and the trial court should have allowed his comments to be presented in the case.

“Safe Place Unharmed” Jury Instruction / Psychological Harm Can Be Considered in Kidnapping Sentence

State v. Mohamed, Slip Opinion No. 2017-Ohio-7468

The Ohio Supreme Court ruled in kidnapping cases, when considering whether the victim was released in a safe place unharmed—a factor that reduces the level of the offense—a jury can consider both physical and psychological harm to the victim. The opinion affirmed a Cleveland taxi driver’s first-degree felony kidnapping conviction.

Ohio’s kidnapping law reduces the level of the offense from a first-degree felony to a second-degree felony if the victim is released in a “safe place unharmed.” Writing for the Supreme Court majority, Justice R. Patrick DeWine stated the statute should be read to consider both physical and psychological harm.

Once harm was properly defined, the high court concluded that Mohamed had failed to overcome the presumption that the failure to ask for a “safe place unharmed” jury instruction was a matter of trial strategy.

Court Affirms Sentences for Crimes Committed by Juvenile

State v. D.B., Slip Opinion No. 2017-Ohio-6952

If a juvenile is convicted of committing a crime that, when charged, required the case to be transferred from the juvenile division to the general division of a common pleas court, the juvenile will be sentenced by the general division for all convictions in that case.

The 6-1 ruling allowed a nine-year prison sentence to stand for a Montgomery County juvenile identified in court records as D.B. When he was 17 years old, D.B. used a firearm to commit two aggravated robberies at two restaurants and forced multiple people into confined spaces against their will.

Juvenile courts hear cases involving people under 18 years old who are charged with acts that would be crimes if committed by an adult. The general division hears all other criminal felony cases.

Writing for the Court majority, Justice Patrick F. Fischer explained the decision resolves a conflict among Ohio appeals courts in cases regarding a “reverse bindover,” where the juvenile offender is convicted on at least one charge that mandated transfer to the general division and convicted on additional charges that would otherwise be adjudicated in the juvenile division.

Fired Adult-Services Worker Had to Disclose Sealed Conviction

Gyugo v. Franklin Cty. Bd. of Dev. Disabilities, Slip Opinion No. 2017-Ohio-6953

The Franklin County Board of Developmental Disabilities had the right to terminate an adult-services worker for failing to disclose his sealed criminal conviction on applications to renew his state registration during the 18 years he worked there, the Ohio Supreme Court ruled.

In a unanimous opinion, the Supreme Court ruled Michael Gyugo was obligated to honestly answer questions about his sealed conviction and the board had the right to fire him for affirmatively denying the conviction.

Writing for the Court, Justice Judith L. French noted that while Ohio law generally does not permit questions on employment and licensure applications about sealed convictions, those questions are permitted—and disclosure is required—when the questions bear a “direct and substantial relationship” to the position.

It does not permit application questions with respect to sealed convictions “unless the question bears a direct and substantial relationship to the position for which the person is being considered.”

“Here, we conclude that the prior-conviction application questions explicitly requiring disclosure of sealed convictions bore a direct and substantial relationship to Gyugo’s position, for which registration as an adult-services worker was required. Determination of both Gyugo’s qualifications for employment by the board and qualifications for the required adult-services registration involved consideration of Gyugo’s criminal history, including any convictions that had been sealed,” the Court concluded.

No Rights Warnings Required to Question Intoxicated Driver in Police Vehicle Front Seat

Cleveland v. Oles, Slip Opinion No. 2017-Ohio-5834

The Ohio Supreme Court ruled when suspects are in front seat of police cars, officers don't always to have read them their rights before questioning.

Mandatory Sentences for Juveniles Constitutional

State v. Anderson, Slip Opinion No. 2017-Ohio-5656

State laws mandating sentences for juveniles are constitutional.

Fifth District: Housekeeper Didn't Need Prosecutor's Approval to Receive Drug Treatment

State v. Boehm, 2017-Ohio-4285

A woman accused of stealing drugs from a Newark home she cleaned can undergo treatment even without the prosecutor's approval. The Licking County prosecutor argued that an earlier sealed conviction makes an offender ineligible for treatment rather than conviction unless the state approves the step. The Fifth District Court of Appeals disagreed, ruling that the prosecutor had no veto power over the decision to allow the housekeeper to receive "intervention in lieu of conviction."

The trial court ruled that Boehm's earlier convictions, which were sealed, didn't disqualify her from eligibility for intervention in lieu of conviction, as provided in R.C. 2951.041. The statute notes that if an offender fails to comply with the intervention plan, the court will impose the appropriate sentence for the crime.

While the prosecutor argued that state law allows prior convictions, even sealed ones, to be introduced in any criminal proceeding, the Fifth District ruled that a court proceeding for intervention in lieu of conviction is a special proceeding that is neither criminal nor civil. The law cited by the prosecutor creates no prosecutorial veto to intervention in lieu of conviction and doesn't apply to this case, Judge Delaney concluded.

Allegations that Judge’s Harsher Sentence Is Vindictive Must Be Supported with Evidence

State v. Rahab, Slip Opinion No. 2017-Ohio-1401

If a criminal defendant gets a harsher sentence than one offered in a plea bargain, any allegation that the judge imposed the sentence as a “trial tax” must be supported with evidence that clearly and convincingly demonstrates the judge acted vindictively.