



## Ohio Second District Court of Appeals Common Appellate Issues

This document contains general information about issues arising in an appeal. It is intended to assist you with your appeal, but it is not complete. It does not cover every issue that could arise in an appeal. Each case is unique, and appointed counsel is encouraged to consider what is necessary for your specific case.

### **General Issues**

- Ineffective assistance of counsel
- Denial of due process
- Cumulative error
- Constitutional challenges to statutes
- Denial of motions for continuances

### **Criminal Pre-Trial Motions**

- Common suppression issues
  - Fourth Amendment issues
    - Seizures
      - Investigatory/*Terry* stops – Absence of reasonable & articulable suspicion
      - Reasonableness of length of investigatory stop
      - Validity of an arrest warrant
      - Absence of probable cause to arrest
      - Validity of warrantless arrest
    - Searches
      - Pat-downs/non-consensual search of person
      - Non-consensual search of automobiles
        - Automobile exception
        - Inventory searches

- Validity of warrantless entry/search of residence
      - Protective sweep
      - Fleeing felon
      - Exigent circumstances
      - Plain view
    - Validity of consent to search
    - Use and timing of K-9 officer
    - Validity of search warrant
  - Fifth Amendment issues
    - *Miranda* rights
      - Custodial interrogation
      - Waiver
    - Voluntariness of statement
  - Eyewitness identification/compliance with R.C. 2933.83
- Sixth Amendment issues
  - Right to counsel
    - Absence during critical stage of criminal case
    - Denial of motion for new counsel/ counsel's motion to withdraw
  - Self-representation
    - Knowing waiver of right to counsel
    - Denial of right to self-representation
    - Role of stand-by counsel
- Challenges to indictment
- Competency of defendant/witnesses
- Speedy trial rights: statutory and constitutional
- Denial of motion to sever charges or defendants
- Denial of intervention in lieu of conviction (ILC)
- Juvenile-specific issues
  - Bindover procedure
  - Waiver/consent
  - Appointment of guardian ad litem/ conflict between parent and child

## Criminal Trial

- Voir dire & *Batson* challenges
- *Brady* violations
- Confrontation Clause/hearsay
- Other common evidentiary issues
  - Evidence Rules 401– 404 (relevance, character, prior acts)
  - Authentication
  - Impeachment
  - Expert v. lay witness testimony
  - Prior convictions (defendant's or witness's)
  - Use of stipulations in lieu of prior convictions
- Co-defendant testimony
- Prosecutorial misconduct
- Jury instructions
- Jury verdict forms
- Manifest weight and sufficiency of the evidence
- Self-defense: evidentiary burdens and jury instruction

## Pleas

- Validity of felony pleas
  - Lack of strict compliance with waiver of constitutional rights (Crim.R. 11(C)(2)(c))
  - Lack of substantial compliance with non-constitutional notifications (Crim.R. 11(C)(2)(a) and (b)) (Note partial v. non-compliance; language of plea form)
    - Nature of the charges
    - Maximum penalty
    - Eligibility for community control
    - Effect of the plea (see Crim.R. 11(B))
      - Guilty v. no contest v. *Alford*
  - Common omissions from plea hearings
    - Failure to state the effect of the plea
    - Failure to provide information regarding classifications/registries

- Sex offender, arson, violent offender, etc.
    - Failure to provide Reagan Tokes notifications
    - Failure to address consecutive sentences
    - Failure to address effect on existing community control sanctions or post-release control violation in another case (R.C. 2929.141)
    - Failure to address consequences for non-citizens/immigration issues
    - Failure to identify mandatory portions of sentence
- Validity of misdemeanor pleas
  - Lack of compliance with Crim.R. 11(D) for serious offense
  - Lack of compliance with Crim.R. 11(E) or Traf.R. 11(D) for petty offense
    - Effect of the plea (Crim.R. 11(B) or Traf.R. 10(B))
  - Lack of explanation of circumstances per R.C. 2937.07
    - Guilty v. no contest pleas
- Validity of Not Guilty by Reason of Insanity (NGRI) pleas
- Denial of defendant's motion to withdraw plea
  - Before sentencing v. after sentencing

## **Sentencing**

- Lack of compliance with statutory criteria
  - Consideration of R.C. 2929.11 & 2929.12
  - Imposition of definite v. indefinite sentences
  - Reagan Tokes Law and advising the offender of all notifications set forth in R.C. 2929.19(B)(2)(c) at the sentencing hearing
- Failure to provide oral notification regarding mandatory sentence, post-release control, court costs, appointed counsel costs, restitution, etc.
- Denial of the right of allocution
- Lack of findings for consecutive sentences (R.C. 2929.14(C)(4))
- Aggregate effect of consecutive sentences
- Failure to merge allied offenses of similar import and/or specifications
- Improper imposition of financial sanctions
  - Restitution
    - Amount of restitution

- Lack of a hearing
    - Failure to consider ability to pay
- Assessment/waiver of court costs
- Improper imposition of post-release control
- Lack of compliance with registration notifications
  - Sex offender, arson, violent offender, etc.
- Jail-time credit
  - Lack of compliance with R.C. 2929.19(B)(2)(g)(i)
  - Incorrect amount of jail-time credit
- Revocation of community control
  - Technical v. Non-technical violations
- Discrepancies between oral sentence and judgment entry

### **Termination of Parental Rights**

- Manifest weight and sufficiency of evidence
- Denial of right to counsel
- Best interests of children
- Findings under R.C. 2151.414
- Due process rights of incarcerated parents
- Compliance with case plan conditions