

[Cite as *State v. McRae* , 2011-Ohio-1639.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JAMES MCCRAE

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. William B. Hoffman, J.

Hon. John W. Wise, J.

Case No. CT10-0037

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Muskingum County Court
of Common Pleas, Case No. CR2009-0089

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

March 31, 2011

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

RON WELCH

Assistant Prosecuting Attorney
Muskingum County, Ohio
27 North Fifth Street, P.O.Box 189
Zanesville, Ohio 43702-0189

ROBERT D. ESSEX

1654 East Broad Street Suite 302
Columbus, Ohio 43203

Hoffman, J.

{¶1} Defendant-appellant James McCrae appeals his sentence entered by the the Muskingum County Court of Common Pleas. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE¹

{¶2} On April 26, 2010, Appellant entered pleas of guilty to one count of involuntary manslaughter, in violation of R.C. 2903.04(A), with a firearm specification; and one count of having a weapon under disability, in violation of R.C. 2923.13(A). The parties jointly recommended a fifteen year prison sentence.

{¶3} Following a hearing, the trial court imposed the maximum, consecutive prison sentence totaling eighteen years.

{¶4} Appellant now appeals, assigning as error:

{¶5} “I. IN LIGHT OF *OREGON V. ICE*, THE TRIAL COURT ERRED IN FAILING TO MAKE THE REQUIRED FINDINGS UNDER O.R.C. 2929.14(E)(4) TO JUSTIFY CONSECUTIVE SENTENCES.”

{¶6} Appellant asserts in the wake of the United States Supreme Court decision in *Oregon v. Ice*, 555 U.S. 160, 129 S.Ct. 711, 172 L.Ed.2d 517, the Ohio Supreme Court decision in *State v. Foster*, 109 Ohio St.3d 1, 845 N.E.2d 470, 2006-Ohio-856, has been overruled and the fact finding provisions of R.C. 2929.14(E)(4) have been resurrected. We disagree.

{¶7} The Ohio Supreme Court recently addressed this issue in *State v. Hodge* (2010), 128 Ohio St.3d 1, holding:

¹ A rendition of the facts pertaining to the appeal is unnecessary for our disposition.

{¶8} “The United States Supreme Court's decision in *Oregon v. Ice* (2009), 555 U.S. 160, 129 S.Ct. 711, 172 L.Ed.2d 517, does not revive Ohio's former consecutive-sentencing statutory provisions, R.C. 2929.14(E)(4) and 2929.41(A), which were held unconstitutional in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.”

{¶9} The Ohio Supreme Court concluded trial court judges are not obligated to engage in judicial fact-finding prior to imposing consecutive sentences unless the General Assembly enacts new legislation requiring findings be made.

{¶10} Accordingly, Appellant's sole assignment of error is overruled, and the judgment of the Muskingum County Court of Common Pleas is affirmed.

By: Hoffman, J.

Gwin, J. and

Wise, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin
HON. W. SCOTT GWIN

s/ John W. Wise
HON. JOHN W. WISE

