

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Appellee

Court of Appeals Nos. L-08-1195
L-08-1263
L-08-1264

v.

Trial Court Nos. CR-2008-1906
CR-2008-1908
CR-2008-1907

Andre L. Winters

Appellant

DECISION AND JUDGMENT

Decided: November 13, 2009

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Jennifer L. Donovan, Assistant Prosecuting Attorney, for appellee.

James F. Schaller, II, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is a consolidated appeal from judgments of the Lucas County Court of Common Pleas that found appellant guilty of 11 felonies, including rape, kidnapping, robbery and aggravated robbery and imposed prison terms totaling 79 years, of which 36

years was mandatory. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} On April 24, 2008, appellant entered pleas of guilty pursuant to *North Carolina v. Alford* (1970), 400 U.S. 25, to the following offenses. In case No. CR-2008-1906, appellant pled to three counts of rape with firearm specifications in violation of R.C. 2907.02(A)(2) and (B); three counts of kidnapping in violation of R.C. 2905.01(A)(1), and three counts of aggravated robbery in violation of R.C. 2911.01(A)(1). In case No. CR-2008-1907, appellant pled to one count of robbery in violation of R.C. 2911.02(A)(2) and in case No. CR-2008-1908, he pled to one count of aggravated robbery in violation of R.C. 2911.01(A)(1).

{¶ 3} The 63-year sentence imposed in case No. CR-2008-1906 for the rapes with gun specifications, kidnappings and aggravated robberies was ordered to be served consecutively to the seven-year sentence imposed in case No. CR-2008-1907 and the nine-year sentence imposed in case No. CR-2008-1908. Appellant's entire prison sentence totaled 79 years. For purposes of appeal, appellant's three cases have been consolidated. He now appeals, setting forth the following assignment of error:

{¶ 4} "I. The trial court erred in imposing multiple consecutive sentences without the required statutory findings required by R.C. 2929.14(E)(4) and 2929.19(B)(2)(c)."

{¶ 5} In support of his sole assignment of error, appellant contends that the trial court erred in imposing consecutive sentences without making certain factual findings. In so doing, appellant asks this court to disregard the holding of the Supreme Court of

Ohio in *State v. Foster*, 109 Ohio St.3d1, 2006-Ohio-856, in light of the recent United States Supreme Court case *Oregon v. Ice* (2009), ___ U.S. ___, 129 S.Ct. 711.

{¶ 6} In *Foster*, the Supreme Court of Ohio struck down parts of Ohio's sentencing scheme. The court held that "[t]rial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences." *Foster*, supra, paragraph seven of the syllabus. In *Oregon v. Ice*, supra, which appellant urges this court to follow, the United States Supreme Court upheld an Oregon sentencing statute which provided judges with discretion in determining whether a defendant's sentences for distinct offenses should run concurrently or consecutively and which also required judges to make certain predicate findings of fact before imposing consecutive sentences. *Ice* held that the Oregon statute was not unfaithful to the goals of the Sixth Amendment and the right to a jury trial.

{¶ 7} As this court held recently in *State v. Miller*, 6th Dist. No. L-08-1314, 2009-Ohio-3908, at ¶ 18, "[w]hile *Oregon v. Ice* may necessitate a re-examination of Ohio's current sentencing statutes, as well as some of those which immediately preceded the decision in *Foster*, such a re-examination can only be taken by the Supreme Court of Ohio. As it stands now, we are bound to follow the law and decisions of the Supreme Court of Ohio, unless or until they are reversed or overruled."

{¶ 8} Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 9} On consideration whereof, the judgments of the Lucas County Court of Common Pleas are affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENTS AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.