

[Cite as *State v. Garvin*, 2005-Ohio-4811.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 85517

STATE OF OHIO	:	
	:	JOURNAL ENTRY
Plaintiff-Appellee	:	
	:	and
-vs-	:	
	:	OPINION
KENNETH GARVIN	:	
	:	
Defendant-Appellant	:	
	:	

DATE OF ANNOUNCEMENT OF DECISION:	<u>SEPTEMBER 15, 2005</u>
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CHARACTER OF PROCEEDING:	Criminal appeal from Common Pleas Court Case No. CR-443523
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JUDGMENT:	Affirmed.
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DATE OF JOURNALIZATION:

APPEARANCE:

For Plaintiff-Appellee:	WILLIAM D. MASON Cuyahoga County Prosecutor ANDREW J. NICHOL Assistant County Prosecutor 8 <sup>th</sup> Floor Justice Center 1200 Ontario Street Cleveland, Ohio 44113
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For Defendant-Appellant:	ROBERT A. DIXON 4403 St. Clair Avenue Cleveland, Ohio 44103
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PATRICIA ANN BLACKMON, A.J.:

{¶ 1} Appellant Kenneth Garvin appeals from the trial court's imposition of a consecutive sentence. On appeal, he assigns the following error for our review:

"I. The appellant's sentence was unconstitutional as it was based upon enhancement factors which were not found by a jury. (Blakely v. Washington (2004), 124 S.Ct. 2531)

{¶ 2} Having reviewed the record and applicable law, we affirm the trial court's decision. The apposite facts follow.

{¶ 3} On December 19, 2003, the Cuyahoga County Grand Jury indicted Garvin in two separate cases. In Case No. 450853, the grand jury indicted Garvin for one count each of robbery, robbery with notice of prior conviction, failure to comply with an order or signal of a police officer, and possession of criminal tools. In Case No. 446790, the grand jury indicted Garvin for one count each of safe cracking and theft.

{¶ 4} On April 21, 2004, in Case No. 450853, Garvin pled guilty to one count of robbery and one count of robbery with the notice of prior conviction deleted. In Case No. 446790, Garvin pled guilty to both safe cracking and to theft. The trial court referred Garvin to the probation department for a pre-sentence investigative report, and scheduled sentencing for May 21, 2004.

{¶ 5} At the sentencing hearing, the trial court considered Garvin's prior criminal record and his history of probation violations. Additionally, the trial court considered the harm to

the victim. Consequently, in the first case, the trial court imposed a sentence of three years on the first count of robbery and five years on the amended second count of robbery. The trial court ordered both counts to be served concurrently. In the second case, the trial court imposed a concurrent sentence of one year for safe cracking, and six months for theft. Finally, the trial court ordered the sentences in the two separate cases to be served consecutively for an aggregate term of incarceration of six years. Garvin now appeals.

**CONSECUTIVE SENTENCE**

{¶ 6} In his sole assigned error, Garvin contends that his consecutive sentence violates the U.S. Supreme Court's decision in *Blakely v. Washington*.<sup>1</sup> However, this issue has been addressed in this court's en banc decision of *State v. Lett*.<sup>2</sup> In *Lett*, we held that R.C. 2929.14(C) and (E), which govern the imposition of maximum and consecutive sentences, do not implicate the Sixth Amendment as construed in *Blakely*. Accordingly, in conformity with that opinion, we reject Garvin's contentions and overrule his sole assigned error.

Judgment affirmed.

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<sup>1</sup>(2004) 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403.

<sup>2</sup>Cuyahoga App. Nos. 84707 and 84729, 2005 Ohio 2666.

It is ordered that appellee recover of appellant its costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Common Pleas Court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES J. SWEENEY, J., and

MARY EILEEN KILBANE, J., CONCUR.

PATRICIA ANN BLACKMON  
ADMINISTRATIVE JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).

