

[Cite as *State v. Kaznoch*, 2010-Ohio-5474.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93591

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

NICHALOUS KAZNOCH

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-514114

BEFORE: Boyle, J., Stewart, P.J., and Sweeney, J.

RELEASED AND JOURNALIZED: November 10, 2010

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MARY J. BOYLE, J.:

{¶ 1} Defendant-appellant, Nichalaus Kaznoch, appeals the trial court's denial of his motion to suppress and his sentence. Finding no merit to the appeal, we affirm.

Procedural History and Facts

{¶ 2} The grand jury indicted Kaznoch on five counts: (1) felonious assault, (2) kidnapping, (3) having a weapon while under disability, (4) cultivation of

marijuana, and (5) possession of criminal tools. He pleaded not guilty to the charges and subsequently moved to suppress the evidence the police obtained in his apartment after entering without a warrant but with the purported consent of Kaznoch's girlfriend, Amanda Hartman, and a key from the property manager. The court held a suppression hearing and ultimately denied the motion. Kaznoch subsequently moved to withdraw his not guilty plea, which the court allowed, and accepted Koznoch's guilty plea to one count of having a weapon while under disability. The remaining counts were dismissed. The trial court subsequently sentenced Koznoch to the maximum five years in prison on the single count.

{¶ 3} Kaznoch appeals, raising four assignments of error:

{¶ 4} “[I.] The trial court erred in holding that Hartman either possessed the authority necessary to consent to a warrantless entry by law officers into appellant's apartment, or that officers were reasonable in their belief that Hartman possessed such authority.

{¶ 5} “[II.] Even if Hartman had the requisite authority to consent to a search of the apartment, such consent expired before the officers entered the premises.

{¶ 6} “[III.] The trial court erred in holding that exigent circumstances were present to the extent that they allowed officers to enter appellant's premises without a warrant.

{¶ 7} “[IV.] The trial court erred in sentencing appellant to the maximum prison sentence permitted by law absent findings required by Ohio’s felony sentencing statute.”

Suppression Hearing

{¶ 8} In his first three assignments of error, Kaznoch challenges the trial court’s denial of his motion to suppress. But by pleading guilty, Kaznoch has waived his right to claim error with respect to the trial court’s denial of his motion to suppress evidence. See *Huber Hts. v. Duty* (1985), 27 Ohio App.3d 244, 500 N.E.2d 339. The Ohio Supreme Court has held that a plea of guilty made prior to sentencing effectively waives all appealable errors that may have occurred in the trial court, unless such errors are shown to have precluded the defendant from voluntarily entering into his or her plea. *State v. Kelly* (1991), 57 Ohio St.3d 127, 566 N.E.2d 658. Indeed, as this court has recently explained:

{¶ 9} “A plea of guilty is a complete admission of guilt. Therefore, a defendant who enters a guilty plea waives the right to appeal all nonjurisdictional issues arising at prior stages of the proceedings. By entering a guilty plea, a defendant waives the right to raise on appeal the correctness of a trial court’s suppression ruling.” (Internal citations omitted.) *State v. Taylor*, 8th Dist. No. 90048, 2008-Ohio-2785, ¶17.

{¶ 10} Here, Kaznoch assigns no error related to his guilty plea. Nor do we find that the purported suppression errors had any bearing on his plea being

knowingly and voluntarily entered. Accordingly, given that Kaznoch pleaded guilty to the single count, we overrule the first three assignments of error.

Sentencing

{¶ 11} In his final assignment of error, Kaznoch argues that the trial court erred in imposing the maximum sentence allowed without making any findings under R.C. 2929.14(C). In support this argument, he relies on a Ninth District case from 2003. But the Ohio Supreme Court has since ruled in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 945 N.E.2d 470, that those provisions of the Ohio Revised Code that required judicial fact finding in order to impose more than the minimum or consecutive sentences were unconstitutional. The Ohio Supreme Court excised those provisions, including R.C. 2929.14(C). *Id.* at ¶99. Trial courts, therefore, are no longer obligated to make statutory findings before imposing maximum, consecutive, or more than the minimum sentence on offenders.

{¶ 12} We do note, however, that the Ohio Supreme Court has accepted jurisdiction to decide the issue of whether the United States Supreme Court's recent decision in *Oregon v. Ice* (2009), 555 U.S. ___, 129 S.Ct. 711, 172 L.Ed.2d 517, has abrogated *Foster*. See *State v. Hodge*, 124 Ohio St.3d 1472, 2010-Ohio-354, 921 N.E.2d 245. But until the Ohio Supreme Court states otherwise, this court continues to follow *Foster*. See *State v. Banna*, 8th Dist. No. 93871, 2010-Ohio-4887. Indeed, "[t]his court has repeatedly chosen to

apply the holding in *Foster* rather than the holding in *Ice* and reserve any reconsideration for the Ohio Supreme Court. * * * As the high court in this state, the Ohio Supreme Court's decision in *Foster* is binding on lower courts. Accordingly, it is not within our purview to step into the Supreme Court's shoes and reconsider *Foster* in light of the decision in *Ice*." *State v. Moore*, 8th Dist. No. 92654, 2010-Ohio-770, ¶14.

{¶ 13} The second assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant 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.

MARY J. BOYLE, JUDGE

MELODY J. STEWART, P.J., and
JAMES J. SWEENEY, J., CONCUR