

**THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
LAKE COUNTY, OHIO**

STATE OF OHIO,	:	<b>OPINION</b>
Plaintiff-Appellee,	:	<b>CASE NO. 2006-L-125</b>
- vs -	:	
CHARLES E. GATCHEL,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 05 CR 000532.

Judgment: Affirmed.

*Charles E. Coulson*, Lake County Prosecutor, and *Gregory J. Mussman*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

*R. Paul LaPlante*, Lake County Public Defender, and *Vanessa R. Clapp*, Assistant Public Defender, 125 East Erie Street, Painesville, OH 44077 (For Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} Appellant, Charles E. Gatchel, appeals from the May 31, 2006 judgment entry of the Lake County Court of Common Pleas, in which he was sentenced for operating a vehicle under the influence of alcohol or drugs (“OVI”).

{¶2} On December 2, 2005, appellant was indicted by the Lake County Grand Jury on one count of OVI, a felony of the third degree, in violation of R.C.

4511.19(A)(1)(a).<sup>1</sup> On December 16, 2005, appellant filed a waiver of the right to be present at his arraignment and the trial court entered a not guilty plea in his behalf.

{¶3} On February 16, 2006, appellant filed a motion to suppress.<sup>2</sup> Appellee, the state of Ohio, filed a response on March 27, 2006. A suppression hearing commenced on March 30, 2006. Following the hearing, the trial court denied appellant's motion to suppress on April 5, 2006.

{¶4} A change of plea hearing was held on April 13, 2006. Appellant withdrew his former not guilty plea, and entered a written plea of guilty. On April 24, 2006, the trial court accepted appellant's guilty plea, deferred sentencing, and referred the matter to the Adult Probation Department.

{¶5} A sentencing hearing was held on May 25, 2006. Pursuant to its May 31, 2006 judgment entry, the trial court sentenced appellant to five years in prison, ordered him to pay a fine in the amount of \$800, and suspended his driver's license for life. It is from that judgment that appellant filed a timely notice of appeal and makes the following assignments of error:

{¶6} “[1.] The trial court erred when it sentenced [appellant] to a more-than-the-minimum prison term in violation of the due process and ex post facto clauses of the Ohio and United States Constitutions.

{¶7} “[2.] The trial court erred when it sentenced [appellant] to a more-than-the-minimum prison term in violation of [appellant's] right to due process.

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1. The charges stem from a July 20, 2005 stop.

2. In his motion, appellant moved the trial court to suppress the following: results of the field sobriety tests; statements taken from or made by him; observations and opinions of the Painesville Police Department; any tangible evidence found on his person or in his vehicle; and his privileged medical information.

{¶8} “[3.] The trial court erred when it sentenced [appellant] to a more-than-the-minimum prison term based on the Ohio Supreme Court’s severance of the offending provisions under *Foster*, which was an act in violation of the principle of separation of powers.

{¶9} “[4.] The trial court erred when it sentenced [appellant] to a more-than-the-minimum prison term contrary to the rule of lenity.

{¶10} “[5.] The trial court erred when it sentenced [appellant] to a more-than-the-minimum prison term contrary to the intent of the Ohio legislators.”

{¶11} We note that the issues contained in appellant’s five assignments of error have recently been addressed by this court in *State v. Elswick*, 11th Dist. No. 2006-L-075, 2006-Ohio-7011. Thus, based on our decision in *Elswick*, appellant’s assignments of error are without merit.

{¶12} The judgment of the Lake County Court of Common Pleas is affirmed.

CYNTHIA WESTCOTT RICE, P.J.,

MARY JANE TRAPP, J.,

concur.