

[Cite as *State v. Grice*, 2010-Ohio-6586.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

KEITH A. GRICE

Defendant-Appellant

JUDGES:

Hon. Sheila G. Farmer, P. J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. 2010 CA 51

OPINION

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 10 CR 073

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

December 23, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Wise, J.

{¶1} Appellant Keith A. Grice appeals from his conviction and sentence for heroin possession in the Court of Common Pleas, Licking County. The appellee is the State of Ohio. The relevant facts leading to this appeal are as follows.

{¶2} On February 12, 2010, the Licking County Grand Jury indicted appellant on possession of heroin, in violation of R.C. 2925.11 and possession of drug paraphernalia, in violation of R.C. 2925.14.

{¶3} On April 16, 2010, appellant appeared for a change of plea. The trial court placed appellant under oath and conducted a plea colloquy. At the conclusion of the colloquy, the trial court accepted appellant's guilty pleas and found appellant guilty. The trial court listened to mitigation and the appellant declined allocution. The State deferred "* * *" to the wisdom of the Court on this matter." Tr. at 15-16.

{¶4} The trial court then engaged in additional colloquy with appellant. At the conclusion of the conversation, the trial court sentenced appellant to twelve (12) months imprisonment for possession of heroin, thirty (30) days incarceration for possession of drug paraphernalia, and a one (1) year license suspension. The sentences were ordered to run concurrently.

{¶5} On May 6, 2010, appellant filed a notice of appeal. He herein raises the following sole Assignment of Error:

{¶6} "I. THE TRIAL COURT DID ERR BY IMPOSING THE MAXIMUM PRISON TERM."

I.

{¶7} In his sole Assignment of Error, appellant contends the trial court erred in imposing a maximum sentence against him for possession of heroin. We disagree.

{¶8} The Ohio Supreme Court's *Foster* decision [109 Ohio St.3d 1, 2006-Ohio-856] holds that judicial fact finding is not required before a court imposes non-minimum, maximum or consecutive prison terms. See, e.g., *State v. Williams*, Muskingum App. No. CT2009-0006, 2009-Ohio-5296, ¶ 19, citing *State v. Hanning*, Licking App.No. 2007CA00004, 2007-Ohio-5547, ¶ 9. Subsequent to *Foster*, in a plurality opinion, the Ohio Supreme Court established a two-step procedure for reviewing a felony sentence. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124. The first step is to “examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law.” *Kalish* at ¶ 4. If this first step is satisfied, the second step requires the trial court's decision be reviewed under an abuse-of-discretion standard. *Id.*

{¶9} In the case sub judice, the trial court stated in its entry that it had considered the record, the oral statements of the parties, and the presentence investigation, as well as the principles and purposes of sentencing and the seriousness and recidivism factors under R.C. 2929.11 and R.C. 2929.12. Sentencing Entry, April 16, 2010, at 1. The court took notice of appellant's lengthy criminal history (Tr. at 17), and appellant presently does not direct us to any significant mitigating information in the record, although he maintains that prison sentences for fifth degree drug offenses are not favored under R.C. 2953.08.

{¶10} Nonetheless, based on our review of the record, and pursuant to *Foster* and *Kalish*, we do not find the trial court abused its discretion in rendering a maximum sentence under the facts and circumstances of this case.

{¶11} Appellant's sole Assignment of Error is therefore overruled.

{¶12} For the foregoing reasons, the judgment of the Court of Common Pleas, Licking County, Ohio, is hereby affirmed.

By: Wise, J.

Farmer, P. J., and

Delaney, J., concur.

JUDGES

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

KEITH A. GRICE

Defendant-Appellant

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JUDGMENT ENTRY

Case No. 2010 CA 51

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Licking County, Ohio, is affirmed.

Costs assessed to appellant.

JUDGES