[Cite as *State v. Hughes,* 2007-Ohio-3625.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	No. 07AP-4 (C.P.C. No. 05CR-01-125)
v.	:	(REGULAR CALENDAR)
Stephen L. Hughes,	:	
Defendant-Appellant.	:	

O P I N I O N

Rendered on July 17, 2007

Ron O'Brien, Prosecuting Attorney, and *Richard Termuhlen, II*, for appellee.

R. Williams Meeks Co., LPA, and *David H. Thomas*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} This is an appeal by defendant-appellant, Stephen L. Hughes, from a judgment of the Franklin County Court of Common Pleas, which resentenced appellant following this court's remand of his original sentence pursuant to *State v. Foster,* 109 Ohio St.3d 1, 2006-Ohio-856.

{¶2} On January 7, 2005, appellant was indicted on one count of aggravated burglary, two counts of kidnapping, two counts of attempted murder, two counts of

felonious assault, two counts of violating a protective order or consent agreement, and one count of menacing by stalking.

{¶3} Following a jury trial, appellant was found guilty of two counts of violating a protective order or consent agreement, one count of kidnapping, one count of abduction (as a stipulated lesser-included offense of kidnapping), and one count of aggravated burglary. The trial court sentenced appellant by entry filed November 9, 2005, and the court imposed consecutive sentences on all counts, with the exception of the aggravated burglary count.

{¶4} Appellant timely appealed his convictions. In *State v. Hughes,* Franklin App. No. 05AP-1287, 2006-Ohio-5411, this court affirmed appellant's convictions, but remanded for resentencing pursuant to the Ohio Supreme Court's recent pronouncement in *Foster,* supra.

{¶5} On December 1, 2006, the trial court conducted a resentencing hearing. The trial court sentenced appellant by entry filed December 6, 2006, again imposing consecutive sentences on all counts except the aggravated burglary count.

{¶6} On appeal, appellant sets forth the following assignment of error for this court's review:

> The trial court's application of *State v. Foster* (2006), 109 Ohio St.3d 1, at Appellant's resentencing hearing violated Appellant's rights as guaranteed by the Ex Post Facto and Due Process Clauses of the United States Constitution. Appellant was entitled to the imposition of minimum, concurrent prison sentences, and the failure to impose such sentences deprived Appellant of his right to a jury trial as guaranteed by the United States Constitution.

{¶7} Under his single assignment of error, appellant argues that the trial court erred in failing to impose minimum, concurrent sentences because, it is contended, the severance remedy in *Foster,* supra, which retroactively vacated most of Ohio's felony sentencing laws, is violative of the Due Process and Ex Post Facto Clauses of the United States Constitution.

{¶8} This argument, however, has been addressed and rejected by this court on numerous occasions. See, e.g., *State v. Gibson,* Franklin App. No. 06AP-509, 2006-Ohio-6899, at ¶18 (rejecting claim that *Foster* violates due process and ex post facto legislation; "*Foster* did not judicially increase the range of appellant's sentence, nor did it retroactively apply a new statutory maximum to an earlier committed crime"); *State v. Alexander,* Franklin App. No. 06AP-501, 2006-Ohio-6375, at ¶7-8 ("We are bound to apply *Foster* as it was written. * * * [A]t the time that appellant committed his crimes the law did not afford him an irrebuttable presumption of minimum and concurrent sentences. As such, *Foster* does not violate appellant's right to due process and does not operate as an ex post facto law"); *State v. Ragland,* Franklin App. No. 04AP-829, 2007-Ohio-836, at ¶9 ("the severance remedy chosen by the Supreme Court of Ohio in *Foster* does not violate ex post facto or due process principles").

{¶9} Accordingly, based upon the above authority, appellant's single assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

BRYANT and TYACK, JJ., concur.

_____