

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-10-1093

Appellee

Trial Court No. CR0201001328

v.

Gabriel Egbujor

**DECISION AND JUDGMENT**

Appellant

Decided: March 31, 2011

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Timothy F. Braun, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

\* \* \* \* \*

OSOWIK, P.J.

{¶ 1} This is an appeal from a sentencing judgment of the Lucas County Court of Common Pleas, which sentenced appellant to two consecutive, 12-month terms of incarceration for his convictions of one count of assault, in violation of R.C. 2903.13, a felony of the fifth degree, and one count of possession of cocaine, in violation of R.C.

2925.11, a felony of the fifth degree. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Gabriel Egbujor, sets forth the following two assignments of error:

{¶ 3} "1) The Trial Court imposed a sentence contrary to law.

{¶ 4} "2) The Trial Court abused its discretion in sentencing Appellant to maximum consecutive sentences."

{¶ 5} The following undisputed facts are relevant to the issues raised on appeal. In 1998, appellant was convicted of trafficking in crack cocaine. Shortly thereafter, appellant was convicted on an additional count of cocaine trafficking. Appellant received consecutive sentences for these charges.

{¶ 6} In 2002, appellant was convicted of possession of crack cocaine with a firearm specification. He was sentenced to a ten-year term of incarceration. In 2004, while still incarcerated on felony drug convictions, appellant was charged and convicted of illegal conveyance of drugs onto the grounds of the detention facility.

{¶ 7} On May 13, 2009, while an inmate at the Toledo Correctional Institute, appellant once again engaged in illicit drug activity while incarcerated for prior felony drug convictions. On May 13, 2009, multiple correctional officers and the prison investigator entered appellant's cell for purposes of searching for illegal drugs and contraband.

{¶ 8} Upon their arrival in appellant's cell, appellant refused all of their orders, attempted to flush illegal drugs concealed in a cell phone adapter down the toilet in their presence, and assaulted one of the corrections officers, causing her injuries. It ultimately took four officials to physically restrain appellant. Crack cocaine and illegal contraband were recovered from appellant's cell.

{¶ 9} Following the recovery of the above unlawful items and the events surrounding same, appellant was indicted on two counts of possession of crack cocaine, one count of tampering with evidence, and one count of assault, all felony offenses. On March 1, 2010, appellant pled guilty to the one count of assault and to a lower level count of possession of cocaine. The remaining charges were dismissed. Appellant was sentenced to two consecutive 12-month terms of incarceration for these offenses. This appeal ensued.

{¶ 10} In the first assignment of error, appellant summarily concludes that his sentencing in the instant case was contrary to law. In support, appellant reiterates the consistently rejected assertion that this court disregard the Ohio Supreme Court ruling in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, which held in relevant part, "trial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than minimum sentences." Appellant claims that pre-*Foster* sentencing requirements should be considered reinstated by the subsequent United States Supreme Court decision of *Oregon v. Ice* (2009), 555 U.S. 160, 129 S.Ct. 711.

{¶ 11} The Ohio Supreme Court has wholly rejected the position proffered by appellant in its ruling in *State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320. The court determined in relevant part that *Ice* "does not revive Ohio's former consecutive sentencing statutory provisions." In conjunction with this, a wealth of relevant case law does not comport with appellant's assertion. In the Third District case of *State v. Sabo*, 3d Dist. No. 14-09-33, 2010-Ohio-1261, the court unambiguously rejected such arguments and emphasized that *Foster* remains binding upon Ohio courts.

{¶ 12} Based upon an abundance of clear and controlling case law, we find appellant's first assignment of error not well-taken.

{¶ 13} In the second assignment of error, appellant similarly asserts that the trial court erred in sentencing appellant to maximum, consecutive sentences. While appellant concedes that *Foster* grants full discretion to impose any sentence within the statutory range, he obtusely suggests that his acquisition of the drugs from fellow inmates somehow serves to mitigate his legal culpability for the charges filed against him.

{¶ 14} Contrary to appellant's implication that the trial court somehow breached general sentencing principles, the record reflects that the trial court thoroughly and methodically delineated appellant's extensive history of felony drug activity and convictions, occurring both while not incarcerated and also multiple times while incarcerated. Based upon the presentence investigation report and ample supporting evidence, the trial court concluded, "whether you're out in the community or you're in the institution, rules don't apply, you're going to traffic in drugs."

{¶ 15} The record of evidence in this matter contains no indicia that the trial court acted in any way arbitrary, unreasonable or unconscionable in sentencing appellant within the permissible statutory range for these latest drug offenses stemming from drug activity appellant committed while serving a term of incarceration on prior drug offenses. We find appellant's second assignment of error not well-taken.

{¶ 16} Wherefore, we find substantial justice has been done in this matter. The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R.24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

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JUDGE

Arlene Singer, J.

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JUDGE

Thomas J. Osowik, P.J.  
CONCUR.

\_\_\_\_\_  
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.