

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
DARKE COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 07-CA-1719
Plaintiff-Appellee	:	
	:	Trial Court Case No. 05-CR-13439
v.	:	
	:	(Criminal Appeal from
FRANZ HARDIN	:	Common Pleas Court)
	:	
Defendant-Appellant	:	

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OPINION

Rendered on the 13th day of June, 2008.

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BROGAN, J.

{¶ 1} Franz Hardin appeals from his conviction of felonious assault on a police officer with a firearm specification and having a weapon while under a disability. Hardin was sentenced to a total of sixteen years in prison on January 31, 2006. Hardin appealed and we reversed Hardin’s sentence per *State v. Foster* (2006), 109 Ohio St.3d

1, 2006-Ohio-856, and remanded the matter for re-sentencing. On remand, the trial court imposed the same sentence previously imposed without making any findings but after considering the general sentencing factors provided in the statute.

{¶ 2} In his first assignment, Hardin contends the trial court erred in not re-sentencing him to minimum prison terms. Hardin argues that the effect of the *Foster* opinion by the Ohio Supreme Court is to create a sentencing law which is more onerous and violates the ex post facto provisions of the United States Constitution, citing *Rogers v. Tennessee* (2001), 532 U.S. 451.

{¶ 3} As a court of appeals, we are in no position to find the Ohio Supreme Court's opinion violated a federal constitutional provision. See *State v. Burkhart*, Champaign App. No. 06CA18, 2007-Ohio-3436, ¶7. The Appellant's first assignment of error is Overruled.

{¶ 4} In his second assignment, Appellant contends the trial court was required to impose concurrent sentences upon him because *Foster* effectively eliminated the trial court's authority to impose consecutive sentences. This assignment must also be Overruled. See *State v. Frazier*, 115 Ohio St.3d 139, 2007-Ohio-5048.

{¶ 5} The Judgment of the trial court is Affirmed.

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WOLFF, P.J., and DONOVAN, J., concur.

Copies mailed to:

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Hon. Jonathan P. Hein