

[Cite as *State v. Stapleton*, 2010-Ohio-5542.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

BRUCE STAPLETON

Defendant-Appellant

JUDGES:

Hon. Julie A. Edwards, P. J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. CT2010-0004

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. CR2009-0218

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

November 15, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Wise, J.

{¶1} Appellant Bruce Stapleton appeals from his conviction and sentence in the Muskingum County Court of Common Pleas. The relevant facts leading to this appeal are as follows:

{¶2} On October 29, 2009, appellant was indicted by the Muskingum County Grand Jury on multiple counts of rape (R.C. 2907.02) and gross sexual imposition (R.C. 2907.05). Appellant entered not guilty pleas on November 9, 2009, and the matter was scheduled for trial.

{¶3} On December 14, 2009, appellant withdrew his previously entered pleas of not guilty and entered guilty pleas to count one, gross sexual imposition (F3); count three, rape (life sentence); count twenty-seven, gross sexual imposition (F4); count twenty-eight, rape (F1); and count thirty-six, gross sexual imposition (F3). All other counts were dismissed pursuant to a plea bargain. The parties jointly recommended to the trial court a sentence of twelve years to life in prison. The matter was scheduled for sentencing and a pre-sentence investigation (PSI) was ordered.

{¶4} On January 25, 2010, following a sentencing hearing, the court imposed a sentence of two years on count one, ten years to life on count three, one year in prison on count twenty-seven, three years in prison on count twenty-eight, and two years in prison on count thirty-six. The court further ordered that counts one, twenty-seven, and thirty-six were to run concurrently and that counts three and twenty-eight were to run consecutively to each other and consecutive to counts one, twenty-seven and thirty-six for an aggregate sentence of fifteen years to life in prison. See Sentencing Entry, January 28, 2010.

{¶15} Appellant timely filed a notice of appeal. He herein raises the following sole Assignment of Error:

{¶16} “I. IN LIGHT OF OREGON V. ICE, THE TRIAL COURT ERRED IN FAILING TO MAKE THE REQUIRED FINDINGS UNDER O.R.C. 2929.14(E)(4) TO JUSTIFY CONSECUTIVE SENTENCES.

I.

{¶17} In his sole Assignment of Error, appellant essentially argues that the trial court erred in failing to make findings of fact under R.C. 2929.14(E)(4) before imposing consecutive sentences. We disagree.

{¶18} Appellant’s argument is premised on the theory that the United States Supreme Court, in *Oregon v. Ice* (2009), 129 S.Ct. 711, 172 L.Ed.2d 517, effectively overruled the Ohio Supreme Court’s decision in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, as to consecutive sentences.

{¶19} However, we have previously concluded that any alteration of the *Foster* holding under *Ice* must await further review, if any, by the Ohio Supreme Court, as we are bound to follow the law and decisions of the Ohio Supreme Court, unless or until they are reversed or overruled. See *State v. Williams*, Muskingum App. No. CT2009-0006, 2009-Ohio-5296, citing *State v. Mickens*, Franklin App.No. 08AP-743, 2009-Ohio-2554, ¶ 25 (internal quotations omitted). We have thus elected to continue to adhere to the Ohio Supreme Court’s decision in *Foster*, which holds that judicial fact finding is not required before a court imposes non-minimum, maximum or consecutive prison terms. *Williams* at ¶ 19, citing *State v. Hanning*, Licking App.No. 2007CA00004, 2007-Ohio-

5547, ¶ 9. See, also, *State v. Lynn*, Muskingum App.No. CT2009-0041, 2010-Ohio-3042; *State v. Konstantinov*, Delaware App.No. 09 CAA 09 0085, 2010-Ohio-3703.

{¶10} Accordingly, we herein reject appellant's claim that the trial court was required to make pre-*Foster* findings in ordering appellant to serve consecutive sentences.

{¶11} Furthermore, the trial court stated in its entry that it had considered the record and the principles and purposes of sentencing, as well as the seriousness and recidivism factors, under R.C. 2929.11 and R.C. 2929.12. Sentencing Entry, January 28, 2010, at 1. Based on our review of the record, we do not find the trial court abused its discretion in rendering consecutive sentences. See *State v. Kalish*, 120 Ohio St.3d 23, 896 N.E.2d 124, 2008-Ohio-4912.

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

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

By: Wise, J.

Edwards, P. J., and

Delaney, J., concur.

JUDGES

