[Cite as *State v. Anderson*, 2010-Ohio-626.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	No. 09AP-631 (C.P.C. No. 08CR10-7708)
v.	:	No. 09AP-632 (C.P.C. No. 08CR10-7846)
Christopher R. Anderson,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on February 23, 2010

Ron O'Brien, Prosecuting Attorney, and *Sheryl L. Prichard*, for appellee.

Robert D. Essex, for appellant.

APPEALS from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Defendant-appellant, Christopher R. Anderson ("appellant"), appeals from the judgments of the Franklin County Court of Common Pleas imposing consecutive prison terms in appellant's convictions for burglary.

{¶2} On October 24, 2008, the Franklin County Grand Jury indicted appellant in case No. 08CR10-7708 for two counts of burglary (one count being a felony of the

second degree and one count being a felony of the third degree), and two counts of theft, both felonies of the fourth degree. On October 31, 2008, the Franklin County Grand Jury indicted appellant in case No. 08CR10-7846 for one count of burglary, a felony of the second degree, and one count of theft, a felony of the fifth degree.

{¶3} On March 12, 2009, pursuant to a plea agreement, appellant pleaded guilty to one count of burglary, a felony of the third degree, in case No. 08CR10-7708, and one count of burglary, a felony of the second degree, in case No. 08CR10-7846. Plaintiff-appellee, state of Ohio ("appellee"), entered a nolle prosequi with respect to the remaining counts in both cases.

{¶4} On April 10, 2009, the court held a sentencing hearing and imposed a three-year term of imprisonment in case No. 08CR10-7708 and a five-year term of imprisonment in case No. 08CR10-7846. The court ordered that appellant serve these terms consecutively, for an aggregate term of eight years.

{¶5} Appellant timely appealed and advances a single assignment of error for our review, as follows:

> 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.

{¶6} In support of his assignment of error, appellant relies on the decision of the United States Supreme Court in *Oregon v. Ice* (2009), ____ U.S. ____, 129 S.Ct. 711. In that case, the court determined that state statutory sentencing schemes that presume concurrent sentences, but allow consecutive sentences to be ordered based upon judicial factfinding, are constitutional. Appellant argues that *Ice* effectively overrules the decision of the Supreme Court of Ohio in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, in

which the court held that R.C. 2929.14(E)(4), which required judicial factfinding as a precondition to imposition of consecutive sentences, was unconstitutional. Thus, appellant argues, the Supreme Court's excision of R.C. 2929.14(E)(4) is a nullity, and the trial court in the present case should have engaged in the factfinding that the foregoing statute mandates before it imposed consecutive sentences upon appellant.

{¶7} Appellee argues initially that appellant has waived his *Ice* argument by failing to raise it at sentencing, given that the United States Supreme Court decided *Ice* before appellant's sentencing hearing. However, we need not engage in the plain-error analysis that results from a finding of waiver because we find no error at all, let alone plain error. This court has consistently declined to depart from *Foster* until the Supreme Court of Ohio directs otherwise. See, e.g., *State v. Potter*, 10th Dist. No. 09AP-580, 2010-Ohio-372; *State v. Franklin*, 182 Ohio App.3d 410, 2009-Ohio-2664; *State v. Russell*, 10th Dist. No. 09AP-428, 2009-Ohio-6420; *State v. Mickens*, 10th Dist. No. 08AP-743, 2009-Ohio-2554; *State v. Anderson*, 10th Dist. No. 08AP-1071, 2009-Ohio-6566; *State v. Crosky*, 10th Dist. No. 09AP-57, 2009-Ohio-4216.

{¶8} In accordance with the foregoing authorities, we reject appellant's argument and overrule his sole assignment of error. Having done so, we affirm the judgments of the Franklin County Court of Common Pleas.

Judgments affirmed.

TYACK, P.J., and FRENCH, J., concur.

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