

[Cite as *State v. Cayne*, 2011-Ohio-1609.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 10AP-772 (C.P.C. No. 09CR08-5157)
	:	
Maurice D. Cayne,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 31, 2011

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

Yeura R. Venters, Public Defender, and *John W. Keeling*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Defendant-appellant, Maurice D. Cayne, appeals from a judgment of conviction and sentence entered by the Franklin County Court of Common Pleas. For the following reasons, we affirm that judgment.

Facts and Procedural History

{¶2} On August 27, 2009, a Franklin County grand jury indicted appellant with one count of aggravated robbery in violation of R.C. 2911.01 and one count of kidnapping in violation of R.C. 2905.01. Both counts contained a firearm specification pursuant to

R.C. 2941.145 and a gang specification pursuant to R.C. 2941.142. He was also indicted with one count of having a weapon while under disability in violation of R.C. 2923.13. Appellant initially entered a not guilty plea to the charges.

{¶3} Subsequently, appellant withdrew his not guilty plea and entered a guilty plea to one count of robbery, a stipulated lesser included offense of aggravated robbery, with a gang specification, and one count of attempted having a weapon while under disability. The trial court accepted appellant's guilty plea, found him guilty, and sentenced him to consecutive prison terms of eight years for the robbery conviction, three years for the gang specification, and 18 months for his attempted having a weapon while under disability conviction, for a total prison term of 12 1/2 years.

{¶4} Appellant appeals and assigns the following error:

THE TRIAL COURT ERRED BY IMPOSING CONSECUTIVE SENTENCES WITHOUT MAKING THE REQUIRED STATUTORY FINDINGS PURSUANT TO R.C. 2929.14(E)(4).

{¶5} Appellant argues in this assignment of error that the trial court could not impose consecutive sentences without making certain findings as required by former R.C. 2929.14(E)(4). We disagree.

{¶6} Simply put, appellant claims that the United States Supreme Court's decision in *Oregon v. Ice* (2009), 555 U.S. 160, 129 S.Ct. 711, nullifies the Supreme Court of Ohio's decision in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. In *Foster*, the court severed portions of Ohio's sentencing scheme including R.C. 2929.14(E)(4), which required trial courts to make certain findings before imposing consecutive sentences. Therefore, appellant claims that trial courts are again required to make those findings.

{¶7} The Supreme Court of Ohio recently considered and rejected this very argument in *State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, ¶39. In *Hodge*, the court held that the United States Supreme Court's decision in *Ice* did not revive Ohio's former consecutive sentencing statutory provisions, R.C. 2929.14(E)(4) and 2929.41(A), which were held unconstitutional in *Foster*. Therefore, in the case at bar, the trial court did not err when it imposed consecutive sentences without making the findings required by former R.C. 2929.14(E)(4). Accordingly, we overrule appellant's sole assignment of error.

{¶8} Having overruled appellant's assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

FRENCH and CONNOR, JJ., concur.
