

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
	:	
Plaintiff-Appellee,	:	
	:	CASE NOS. 2006-L-216
- vs -	:	and 2006-L-217
	:	
TAMARA N. ASTON,	:	
	:	
Defendant-Appellant.	:	

Criminal Appeals from the Lake County Court of Common Pleas, Case Nos. 05 CR 000109 and 000017.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Gregory J. Mussman*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

R. Paul LaPlante, Lake County Public Defender, and *Vanessa R. Clapp*, Assistant Public Defender, 125 East Erie Street, Painesville, OH 44077 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Tamara N. Aston, appeals two Judgment Entries of Sentence, rendered by the Lake County Court of Common Pleas in separate underlying cases, sentencing her to serve a prison term of five years for crimes more fully described below. For the reasons that follow, we affirm the decision of the court below on the authority of *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856.

{¶2} On January 7, 2005, in Case No. 05 CR 000017, Aston was indicted on three counts of Trafficking in Cocaine, felonies of the third degree, in violation of R.C. 2925.03(A)(1); four counts of Trafficking in Cocaine, felonies of the fourth degree, in violation of R.C. 2925.03(A)(1); one count of Trafficking in Cocaine, a felony of the fifth degree in violation of R.C. 2925.03(A)(1); and one count of Engaging in a Pattern of Corrupt Activity, a felony of the first degree in violation of R.C. 2923.32(A)(1).

{¶3} On May 20, 2005, Aston entered pleas of guilty to three counts of third degree Trafficking in Cocaine and to Engaging in a Pattern of Corrupt Activity.

{¶4} On June 15, 2005, the trial court sentenced Aston to serve one year prison terms for each of the Trafficking in Cocaine convictions and a three year prison term for Engaging in a Pattern of Corrupt Activity. The court ordered the prison sentences to be served concurrently with each other, but consecutively with the sentence in Case No. 05 CR 000109. The trial court further ordered Aston's driver's license to be suspended for six months and imposed three years of post release control.

{¶5} On May 27, 2005, in Case No. 05 CR 000109, Aston was indicted on Trafficking in Cocaine, a felony of the third degree in violation of R.C. 2925.03(A)(2), with a Cash Forfeiture Specification as set forth in R.C. 2925.42; Trafficking in Cocaine, a felony of the fourth degree in violation of R.C. 2925.03(A)(2), with a Cash Forfeiture Specification as set forth in R.C. 2925.42; and two counts of Possessing Criminal Tools, felonies of the fifth degree in violation of R.C. 2923.24.

{¶6} On June 15, 2005, Aston entered guilty pleas to third and fourth degree Trafficking in Cocaine. On the same day, the trial court sentenced Aston to serve a mandatory prison term of two years for third degree Trafficking in Cocaine and an eighteen

month prison term for fourth degree Trafficking in Cocaine. The court ordered the prison sentences to be served concurrently with each other, but consecutively with the sentence in Case No. 05 CR 000017, for an aggregate prison term of five years. The trial court further ordered Aston's driver's license to be suspended for six months and imposed three years of post release control.

{¶7} Aston appealed her sentences to this court, on the grounds that the sentences were unconstitutional under *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856.

{¶8} In *State v. Aston*, 11th Dist. Nos. 2005-L-160 and 2005-L-161, 2006-Ohio-3773, this court reversed Aston's sentences in Case No. 05 CR 000109 and the order that these sentences be served consecutively with the sentences in Case No. 05 CR 000017, and remanded both cases for resentencing. *Id.* at ¶20.

{¶9} On September 7, 2006, the trial court again ordered Aston to serve concurrent prison sentences of two years and eighteen months in Case No. 000109 and to serve these sentences consecutively with the sentences in Case. No. 05 CR 000017.

{¶10} Aston timely appeals and raises the following assignments of error.

{¶11} "[1.] The trial court erred when it sentenced the defendant-appellant to a more-than-the-minimum, consecutive prison term in violation of the due process and ex post facto clauses of the Ohio and United States Constitutions.

{¶12} "[2.] The trial court erred when it sentenced the defendant-appellant to a more-than-the-minimum, consecutive prison term in violation of defendant-appellant's right to due process.

{¶13} "[3.] The trial court erred when it sentenced the defendant to a more-than-the-minimum, consecutive prison term based on the Ohio Supreme Court's severance of

the offending provisions under *Foster*, which was an act in violation of the principle of separation of powers.

{¶14} "[4.] The trial court erred when it sentenced the defendant-appellant to a more-than-the-minimum, consecutive prison term contrary to the rule of lenity.

{¶15} "[5.] The trial court erred when it sentenced the defendant-appellant to a more-than-the-minimum, consecutive prison term contrary to the intent of the Ohio Legislators."

{¶16} Aston's arguments have been previously raised and rejected by numerous decisions of this court. *State v. Bengal*, 11th Dist. No. 2006-L-123, 2007-Ohio-2691; *State v. Filchok*, 11th Dist. No. 2006-L-122, 2007-Ohio-2574; *State v. Marino*, 11th Dist. No. 2006-L-192, 2007-Ohio-2566; *State v. Green*, 11th Dist. Nos. 2005-A-0069 and 2005-A-0070, 2006-Ohio-6695.

{¶17} Aston's arguments have also been consistently rejected by other Ohio appellate districts and federal courts. See *State v. Gibson*, 10th Dist. No. 06AP-509, 2006-Ohio-6899; *State v. Moore*, 3rd Dist. No. 1-06-51, 2006-Ohio-6860; *United States v. Portillo-Quezada* (C.A.10 2006), 469 F.3d 1345, 1354-1356, and the cases cited therein.

{¶18} Based on the authority of these and other cases, Aston's assignments of error are without merit. The judgments of the Lake County Court of Common Pleas, sentencing Aston to an aggregate prison term of five years, are affirmed.

CYNTHIA WESTCOTT RICE, P.J., concurs,

COLLEEN MARY O'TOOLE, J., concurs in judgment only.