

THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- VS -	:	CASE NO. 2006-L-227
JASON E. STONEBURNER,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 05 CR 000469.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Alana A. Rezaee*, 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).

CYNTHIA WESTCOTT RICE, P.J.

{¶1} Appellant, Jason E. Stoneburner (“Stoneburner”), appeals the judgment of the Lake County Common Pleas Court. That court resentenced Stoneburner following this court’s decision from a direct appeal that ordered him to be resentenced pursuant to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. *State v. Stoneburner*, 11th Dist. No. 2005-L-210, 2006-Ohio-4036. On review, we affirm the judgment entry of the trial court.

{¶2} Stoneburner had been convicted of two counts of burglary, violations of R.C. 2911.12(A)(2) and felonies of the second degree. He was also convicted of a firearm specification, pursuant to R.C. 2941.141. The trial court imposed a four-year sentence for the first burglary offense and a five-year sentence for the second burglary offense. The sentences were ordered to be served consecutively. In addition, Stoneburner received a consecutive one-year sentence for the firearm specification with respect to the second burglary offense. In the aggregate, therefore, he received a ten-year sentence.

{¶3} Stoneburner's previous appeal to this court challenged the sentences that were imposed by the trial court.

{¶4} This court's prior decision directed the trial court to reconsider only the sentences for the burglary convictions because they were more-than-the-minimum sentences and because they were ordered to be served consecutively. The one-year sentence for the firearm specification was not challenged on direct appeal and, therefore, it was to remain undisturbed. *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, at paragraph three of the syllabus.

{¶5} At resentencing, the trial court imposed the same sentence that was originally imposed. Stoneburner timely appealed to this court, raising five assignments of error. They are as follows:

{¶6} "[1.] The trial court erred when it sentenced the defendant-appellant to more-than-the-minimum, consecutive prison terms in violation of the Due Process and Ex Post Facto Clauses of the Ohio and the United States Constitutions.

{¶17} “[2.] The trial court erred when it sentenced the defendant-appellant to more-than-the-minimum, consecutive prison terms in violation of defendant-appellant’s right to due process.

{¶18} “[3.] The trial court erred when it sentenced the defendant-appellant to more-than-the-minimum, consecutive prison terms based on the Ohio Supreme Court’s severance of the offending provisions under [*State v.*] *Foster*, which was an act in violation of the principle of separation of powers.

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

{¶10} “[5.] The trial court erred when it sentenced the defendant-appellant to more-than-the-minimum, consecutive prison terms contrary to the intent of the Ohio legislators.”

{¶11} The focal point of Stoneburner’s arguments in all of his assignments of error is the decision of the Supreme Court of Ohio in *State v. Foster*, supra.

{¶12} In the *Foster* decision, the Supreme Court of Ohio found certain statutes to be unconstitutional and applied a severance remedy to the offending statutes. *Id.* at paragraphs two, four, and six of the syllabus.

{¶13} Stoneburner asserts that his sentences are unconstitutional, because he committed his crimes prior to the Supreme Court of Ohio’s decision in *State v. Foster*, but was sentenced pursuant to the post-*Foster* version of R.C. 2929.14.

{¶14} This court recently addressed Stoneburner’s arguments in the case of *State v. Elswick*, 11th Dist. No. 2006-L-075, 2006-Ohio-7011. In *State v. Elswick*, this court found the assignments of error to be without merit. *Id.* at ¶5-55. See, also, *State*

v. Green, 11th Dist. Nos. 2005-A-0069 and 2005-A-0070, 2006-Ohio-6695; *State v. Asbury*, 11th Dist. No. 2006-L-097, 2007-Ohio-1073; *State v. Anderson*, 11th Dist. No. 2006-L-142, 2007-Ohio-1062; and *State v. Spicuzza*, 11th Dist. No. 2006-L-141, 2007-Ohio-783. Except for the consecutive nature of Stoneburner's sentence, the assignments of error are identical to those argued in *State v. Elswick*. This court has held that the *Elswick* decision "is equally applicable to more-than-the-minimum and consecutive prison terms." *State v. Mansfield*, 11th Dist. No. 2006-L-117, 2007-Ohio-1198, at ¶10. Moreover, in his brief, Stoneburner has not brought anything to our attention that would require additional consideration for the fact that he has received consecutive prison terms.

{¶15} These same 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*, 3d 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.

{¶16} Based on the authority of *State v. Elswick*, Stoneburner's assignments of error are without merit.

{¶17} The judgment of the Lake County Court of Common Pleas is affirmed.

DIANE V. GRENDELL, J.,

MARY JANE TRAPP, J.,

concur.