[Cite as *State v. Obong*, 2011-Ohio-21.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
	:	Appellate Case No. 23254
Plaintiff-Appellee	:	
	:	Trial Court Case No. 08-CR-3891
v.	:	
	:	(Criminal Appeal from
OBONGYKPENG OBONG	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

. . . . . .

O P I N I O N

Rendered on the 7th day of January, 2011.

. . . . . .

MATHIAS H. HECK, JR., by JOHNNA M. SHIA, Atty. Reg. #0067685, Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts Building, Post Office Box 972, 301 West third Street, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

MICHAEL B. MURPHY, Atty. Reg. #0017992, 5241 Shiloh Springs Road, Dayton, Ohio 45426
Attorney for Defendant-Appellant

. . . . . .

FAIN, J.

{¶ 1} Defendant-appellant Obongykpeng Obong appeals from his conviction and sentence for Receiving Stolen Property and for two counts of Burglary, following a guilty plea. Obong was sentenced to three years on each of the Burglary convictions, and to twelve months on the Receiving Stolen Property conviction, to be

served consecutively, for an aggregate sentence of seven years.

{¶ 2} Obong's initial appellate counsel filed a brief in accordance with *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, indicating that he could find no potential assignments of error having arguable merit. We performed our duty of independent review, and determined that there was one potential assignment of error having arguable merit. Decision and Entry filed herein on April 6, 2010. That potential assignment of error had to do with whether *Oregon v. Ice* (2009), 555 U.S. 160, 129 S.Ct. 711, 172 L.Ed.2d 517, effectively revives the efficacy of R.C. 2929.14(E)(4), which required judicial findings of fact as a predicate for the imposition of consecutive sentences.

{¶ 3} R.C. 2929.14(E)(4) had been severed from the felony sentencing statute by *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, upon the ground that the requirement of judicial fact finding violated the right to a jury trial guaranteed by the Sixth Amendment to the United States Constitution. *Oregon v. Ice*, supra, considered a materially indistinguishable Oregon statute requiring judicial fact finding as a predicate for the imposition of consecutive sentences, and found that statute not to violate the Sixth Amendment.

{¶ 4} In our entry of April 6, 2010, we directed appellate counsel to file a new brief setting forth one or more assignments of error raising the issue we identified. Counsel filed a brief on June 4, 2010, in accordance with our order.

{¶ 5} Obong's June 4, 2010 brief does not expressly set forth an assignment of error, but we infer it to be that the trial court erred by imposing consecutive sentences without having made the findings of fact required by R.C. 2929.14(E)(4).

{¶ 6} By decision and entry filed herein on September 8, 2010, we noted that the Supreme Court of Ohio had this precise issue before it in *State v. Hodge*, Case No. 2009-1997. We deferred disposition of Obong's appeal until such time as the Supreme Court of Ohio decided *State v. Hodge*.

{¶ 7} The Supreme Court of Ohio has now decided the issue, adversely to Obong. In *State v. Hodge*, _____ Ohio St.3d _____, 2010-Ohio-6320, the Supreme Court has held that R.C. 2929.14(E)(4), although not unconstitutional, in light of *Oregon v. Ice*, supra, has not been revived by *Oregon v. Ice*, and therefore, unless and until the Ohio General Assembly should re-enact a similar requirement, trial courts are free to impose consecutive sentences, in their sound discretion, without the judicial fact-finding formerly required by R.C. 2929.14(E)(4).

{¶ 8} Accordingly, Obong's sole, inferred assignment of error is overruled. The judgment of the trial court is Affirmed.

. . . . . .

FROELICH and OSOWIK, JJ., concur.

(Hon. Thomas J. Osowik, Sixth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

Mathias H. Heck, Jr.
Johnna M. Shia
Michael B. Murphy
Hon. Dennis J. Langer