

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
CLARK COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 2015-CA-59
Plaintiff-Appellee	:	
	:	Trial Court Case Nos. 06-CR-1043
v.	:	06-CR-1342
	:	
MARWAN SNODGRASS	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 18th day of December, 2015.

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Attorney for Defendant-Appellant

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FAIN, J.

{¶ 1} Defendant-appellant Marwan Snodgrass appeals from an order of the Clark  
County Court of Common Pleas overruling his Motion for Resentencing. He contends  
that the trial court was obligated to follow the dictates of R.C. 2929.14(E)(4) or R.C.

2929.14(C) when imposing consecutive sentences.

{¶ 2} For the reasons set forth below, we conclude that neither statutory scheme is applicable to Snodgrass. Accordingly, the judgment of the trial court is Affirmed.

### **I. The Course of Proceedings**

{¶ 3} In 2007, Snodgrass was convicted and sentenced for Felonious Assault on a Police Officer, Having a Weapon While Under Disability, Assault (with a firearm specification), and Carrying a Concealed Weapon. He was sentenced to a 19-year prison term. We affirmed. *State v. Snodgrass*, 177 Ohio App.3d 556, 2008-Ohio-4019, 895 N.E.2d 259 (2d Dist.).

{¶ 4} An appeal to the Supreme Court of Ohio was not accepted. *State v. Snodgrass*, 120 Ohio St.3d 1458, 2008-Ohio-6813, 896 N.E.2d 970 (Table). A petition for federal habeas corpus was dismissed. *Snodgrass v. Brunzman*, S.D. Ohio No. 3:09-cv-081, 2011 WL 5554048 (Nov. 15, 2011). We denied Snodgrass's App.R. 26(B) application to reopen his appeal by Decision and Entry dated December 12, 2008.

{¶ 5} On March 13, 2015, Snodgrass filed a Motion for Resentencing – with which this appeal is concerned – in which he argued that the trial court had failed to follow R.C. 2929.14(E)(4) when it imposed consecutive sentences. The trial court overruled the motion. Snodgrass appeals.

### **II. There Is No Requirement of Statutory Findings for Consecutive Sentences Imposed After *State v. Foster*, but Before the Effective Date of R.C. 2929.14(C)**

{¶ 6} Snodgrass's sole assignment of error states as follows:

THE TRIAL COURT IMPOSED CONSECUTIVE PRISON TERMS WITHOUT MAKING THE REQUIRED FINDINGS PURSUANT TO R.C. 2929.14(E)(4), NOW R.C. 2929.14(C)(4), APPELLANT HAS BEEN DEPRIVED OF HIS EQUAL PROTECTION AND DUE PROCESS OF LAW UNDER THE OHIO AND UNITED STATES CONSTITUTIONS.

{¶ 7} Snodgrass contends that the trial court erred in sentencing by failing to comply with the judicial fact-finding requirements of R.C. 2929.14(E)(4), or its successor, R.C. 2929.14(C).

{¶ 8} R.C. 2929.14(E)(4), enacted by the Ohio legislature in 1996 by Am.Sub. S.B. No. 2, required that trial courts make certain findings in order to sentence an offender to consecutive sentences. However, in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, the Supreme Court of Ohio found those provisions unconstitutional, because they required judicial fact-finding. *Id.* at paragraph three of the syllabus. As a remedy, *Foster* severed those provisions in their entirety from the statute. *Id.* at paragraph four of the syllabus. Thereafter, a sentencing court was no longer required to make findings before, or give its reasons for, imposing consecutive sentences. *Id.* at paragraph seven of the syllabus.

{¶ 9} In 2009, the United States Supreme Court decided *Oregon v. Ice*, 555 U.S. 160, 129 S.Ct. 711, 172 L.Ed.2d 517 (2009), which found that an Oregon statute requiring judicial fact-finding as a prerequisite to the imposition of consecutive sentences was constitutional. In 2010, the Supreme Court of Ohio, acknowledging that judicial fact-finding as a prerequisite for the imposition of consecutive sentences, is neither

unconstitutional, nor constitutionally required, decided *State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, 941 N.E.2d 768, which stated that *Ice* did not act to revive the judicial fact-finding requirement. *Id.* at ¶ 39. The Supreme Court further stated that the Ohio General Assembly was free to enact new legislation requiring judicial fact-finding. *Id.* In 2011 H.B. 86, the Ohio General Assembly enacted a new requirement regarding judicial fact-finding and consecutive sentencing, codified at R.C. 2929.14(C)(4).

{¶ 10} Snodgrass was sentenced in July 2007, after *Foster*, but before *Ice* and *Hodge*. Thus, the trial court was not mandated to make statutory findings as a prerequisite to imposing consecutive sentences. Snodgrass contends, however, that the trial court should have been bound by the requirements of R.C. 2929.14(E). In support, he argues that the “Ohio Supreme Court took a statue [sic] that was constitutional and declared it unconstitutional when it severed former R.C. 2929.14(E)(4), but then later found the same statute to have been constitutional, making the Ohio Supreme Court’s Judgment in ‘*Foster*’ void and unenforceable from its inception.”

{¶ 11} This argument ignores the fact that the Supreme Court, in *Hodge*, declined to reinstate the provisions of R.C. 2929.14(E), noting that the General Assembly would need to enact legislation regarding judicial fact-finding. The Court made it clear that the holding in *Foster* was not rendered void by *Hodge*. Furthermore, we have specifically held that *Hodge* does not obligate a trial court to make factual findings under R.C. 2929.14(E)(4) with regard to a person sentenced after *Foster* but before the effective date of H.B. 86. *State v. Ford*, 2d Dist. Clark No. 11-CA-26, 2011-Ohio-5203, ¶ 9. To the extent that Snodgrass asks us to overturn *Foster*, we note that we have no authority to do so; we are required to follow the holdings of the Supreme Court of Ohio. *State v.*

*Robinson*, 8th Dist. Cuyahoga No. 92050, 2009-Ohio-3379, ¶ 29.

{¶ 12} In the alternative, Snodgrass argues that R.C. 2929.14(C)(4) should be applied to his sentence. However, we have rejected claims that H.B. 86, which enacted R.C. 2929.14(C)(4), applies retroactively to an offender who was sentenced before the effective date of H.B. 86 *State v. Clay*, 2d Dist. Miami No. 2011 CA 32, 2012-Ohio-3842, ¶ 10.

{¶ 13} Snodgrass's sole assignment of error is overruled.

### III. Conclusion

{¶ 14} Snodgrass's sole assignment of error having been overruled, the judgment of the trial court is Affirmed.

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DONOVAN and WELBAUM, JJ., concur.

Copies mailed to:

Ryan A. Saunders  
Marwan Snodgrass  
Hon. Douglas M. Rastatter

Case Name:	<i>State of Ohio v. Marwan Snodgrass</i>
Case No:	Clark App. No. 2015-CA-59
Panel:	Fain, Donovan, Welbaum
Author:	Mike Fain
Summary:	There is no requirement of statutory findings for consecutive sentences imposed after <i>State v. Foster</i> , 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, but before the effective date of R.C. 2929.14(C). <i>State v. Hodge</i> , 128 Ohio St.3d 1, 2010-Ohio-6320, 941 N.E.2d 768, followed. Affirmed.

