

COURT OF APPEALS
KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Julie A. Edwards, P.J.
	:	Sheila G. Farmer, J.
Plaintiff-Appellee	:	John W. Wise, J.
	:	
-VS-	:	Case No. 09 CA 12
	:	
	:	
SHAWN G. WILLIAMS	:	<u>O P I N I O N</u>
	:	
Defendant-Appellant	:	

CHARACTER OF PROCEEDING:	Criminal Appeal from Knox County Court of Common Pleas Case No. 08CR04-0053
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT ENTRY:	September 28, 2010
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APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

JOHN C. THATCHER
Knox County Prosecutor

NOEL B. ALDEN
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Edwards, P.J.

{¶1} Appellant, Shawn G. Williams, appeals a judgment of the Knox County Common Pleas Court convicting him of two counts of gross sexual imposition (R.C. 2907.05(A)(4)). Appellee is the State of Ohio.

STATEMENT OF FACTS AND CASE

{¶2} On April 8, 2008, appellant was indicted by the Knox County Grand Jury with two counts of rape and two counts of gross sexual imposition. He pleaded guilty to two counts of gross sexual imposition and the rape charges were dismissed by the state. Appellant was sentenced to four years incarceration on each count, to be served consecutively.

{¶3} Appellant filed a timely notice of appeal and the trial court appointed the Knox County Public Defender to represent appellant. Appointed counsel filed an *Anders* brief and a motion to withdraw, which was granted by this Court on March 22, 2010. Present counsel was then appointed and assigns a single error:

{¶4} “THE TRIAL COURT ERRED WHEN IT IMPOSED CONSECUTIVE SENTENCES WITHOUT MAKING OF (SIC) THE FINDINGS REQUIRED BY R.C. 2929.14(E)(4).”

{¶5} Appellant recognizes that in *State v. Foster*, 109 Ohio St.3d 1, 845 N.E.2d 470, 2006-Ohio-856, the Ohio Supreme Court found R.C. 2929.14(E)(4) unconstitutional and severed it from the statute. Appellant argues that the United States Supreme Court has overruled the *Foster* decision in *Oregon v. Ice* (2009), 129 S.Ct. 711, 172 L.Ed.2d 517.

{¶6} This Court has previously rejected this argument on several occasions, finding that we do not have the authority to overturn *Foster*. E.g. *State v. Argyle*, Delaware App. No. 09CAA090076, 2010-Ohio-273; *State v. Arnold*, Muskingum App. No. CT2009-0021, 2010-Ohio-3125. For the reasons stated in *Argyle*, supra, and *Arnold*, supra, the assignment of error is overruled.

{¶7} The judgment of the Knox County Common Pleas Court is affirmed.

By: Edwards, P.J.

Farmer, J. and

Wise, J. concur

s/Julie A. Edwards

s/Sheila G. Farmer

s/John W. Wise

JUDGES

JAE/r0802

IN THE COURT OF APPEALS FOR KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

SHAWN G. WILLIAMS

Defendant-Appellant

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JUDGMENT ENTRY

CASE NO. 09 CA 12

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Knox County Court of Common Pleas is affirmed. Costs assessed to appellant.

s/Julie A. Edwards

s/Sheila G. Farmer

s/John W. Wise

JUDGES