

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-10-032

Appellee

Trial Court No. 2009CR0362

v.

Benito Mejia

DECISION AND JUDGMENT

Appellant

Decided: April 22, 2011

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, Heather M. Baker and David E. Romaker, Jr., Assistant Prosecuting Attorneys, for appellee.

Lawrence A. Gold, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Benito Mejia, appeals his sentence, following his conviction on a guilty plea on counts of rape and identity theft in the Wood County Court of Common Pleas. For the following reasons, we affirm.

{¶ 2} Appellant and his co-defendant, Jacob Espana, met at a bar in North Baltimore, Ohio on July 18, 2009. Espana offered to give a female patron at the bar a ride home. She accepted. Appellant and Espana did not take her home, but instead took her to a local hotel. Appellant admitted that he knew that she was substantially intoxicated at the time. While at the hotel, appellant held her down and covered her face so she could not scream while he had sexual intercourse with her.

{¶ 3} During the state's resulting rape investigation, investigators discovered appellant had been using the name and social security number of another in order to gain employment.

{¶ 4} The state charged appellant with identity fraud, a violation of R.C. 2913.49(B)(2), a felony of the fifth degree, and rape, a violation of R.C. 2907.02(A)(2), a felony of the first degree. Appellant pled guilty to both counts on April 30, 2010. The trial court sentenced appellant to serve consecutive terms of incarceration of one year for identity fraud, and five years for rape.

{¶ 5} Appellant now appeals, setting forth the following two assignments of error:

{¶ 6} "First Assignment of Error

{¶ 7} "Appellant's consecutive sentence violated appellant's right to due process under the Sixth and Fourteenth Amendments of the United States Constitution and sections Five and Sixteen, Article I, and section Four, Article IV of the Ohio Constitution.

{¶ 8} "Second Assignment of Error

{¶ 9} "The trial court abused its discretion and erred to the prejudice of appellant at sentencing by imposing a prison term in excess of the minimum in violation of the Appellant's right to due process under the Sixth and Fourteenth Amendments of the United States Constitution."

{¶ 10} In his first assignment of error, appellant maintains that consecutive sentences imposed on a defendant for distinct crimes violates Section 4, Article IV, Ohio Constitution, which restricts Ohio courts' jurisdiction to that which is provided by law.

{¶ 11} Appellant argues that his consecutive sentence is unconstitutional because, in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, the Ohio Supreme Court removed the legislature's grant of authority to trial judges to impose consecutive sentences, thereby depriving the trial court of subject matter jurisdiction to impose consecutive sentences.

{¶ 12} Subsequent to the submission of appellant's brief in this matter, the Supreme Court of Ohio examined the question of the imposition of consecutive sentences post-*Foster* and concluded that there was no constitutional barrier to the imposition of such sentences within the discretion of a trial court. *State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, ¶ 39. Accordingly, appellant's first assignment of error is not well-taken.

{¶ 13} In his second assignment of error, appellant asserts that a sentence imposed in excess of the minimum sentence, but within the sentencing range, violates the Sixth Amendment guarantee of a jury trial made applicable to the states via the Due Process

Clause of the Fourteenth Amendment. This argument has been considered and rejected.

Foster, supra, at ¶ 88-89, *State v. Elmore*, 122 Ohio St.3d 472, 2009-Ohio-3478, ¶ 8.

Accordingly, appellant's second assignment of error is not well-taken.

{¶ 14} On consideration, the judgment of the Wood County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal, pursuant to App.R.24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
