

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

State of Ohio

Court of Appeals No. WD-11-017

Appellee

Trial Court No. 2009CR0381

v.

Benito Mejia

**DECISION AND JUDGMENT**

Appellant

Decided: June 15, 2012

\* \* \* \* \*

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

Lawrence A. Gold, for appellant.

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**PIETRYKOWSKI, J.**

{¶1} Defendant-appellant, Benito Mejia, appeals the May 5, 2010 judgment of the Wood County Court of Common Pleas which, following a guilty plea to one count of

rape, sentenced him to five years of imprisonment. Because appellant's sentence is not contrary to law, we affirm.

{¶2} On August 6, 2009, appellant was indicted on one count of rape, in violation of R.C. 2907.02(A)(2), a first degree felony. The charge stemmed from an incident on July 18, 2009, when appellant and a co-defendant allegedly forced a woman to have sex in a motel room. Appellant entered a not guilty plea to the charge. On February 26, 2010, appellant withdrew his not guilty plea and entered a plea of guilty to the charge. At that time, appellant also entered a guilty plea to one count of identity fraud, case No. 09-CR-362, and the state agreed to recommend a 12-month sentence to be served concurrently with the rape sentence.

{¶3} Thereafter, appellant was sentenced to five years of imprisonment for rape and a 12-month term for identify fraud. However, the court ordered that the sentences be served consecutively. This appeal followed and appellant raises the following assignment of error:

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 appellant's right to due process under the Sixth and Fourteenth Amendments of the United States Constitution.

{¶4} In his sole assignment of error, appellant argues that his consecutive sentence is unconstitutional in light of the Supreme Court of Ohio's decision in *State v. Hodge*,

128 Ohio St.3d 1, 2010-Ohio-6320, 941 N.E.2d 768. In *Hodge*, the court acknowledged that the United States Supreme Court’s decision in *Oregon v. Ice*, 555 U.S. 160, 129 S.Ct. 711, 172 L.E.2d 517 (2009), had an impact on its holding in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. The *Hodge* court noted, however, that although *Ice* upheld Oregon’s consecutive-sentencing statutes similar to those struck down in *Foster*, the impact was “collateral” in nature and did not act to “revive” the excised sections. *Id.* at ¶ 37-39. *Hodge* noted that legislative action was required to reenact provisions regarding judicial factfinding at sentencing. *Id.* at ¶ 39.

{¶5} This court, following *Hodge*, has expressly rejected the argument that, following *Ice*, the provisions in R.C. 2929.14(E)(4) and 2929.41(A) have been revived and must be followed before consecutive sentences may be imposed. *See State v. Maloy*, 6th Dist. No. L-10-1350, 2011-Ohio-6919. Accordingly, we find that appellant’s assignment of error is not well-taken.

{¶6} On consideration whereof, we find that appellant was not prejudiced or prevented from having a fair proceeding and the judgment of the Wood County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

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.

Peter M. Handwork, J.

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JUDGE

Mark L. Pietrykowski, J.

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JUDGE

Thomas J. Osowik, J.  
CONCUR.

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JUDGE

<p>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: <a href="http://www.sconet.state.oh.us/rod/newpdf/?source=6">http://www.sconet.state.oh.us/rod/newpdf/?source=6</a>.</p>
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