

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 89295

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RONALD SHARP

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-445796

BEFORE: Cooney, P.J., McMonagle, J., and Boyle, J.

RELEASED: November 29, 2007

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement

of decision by the clerk per App.R. 22(E). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

COLLEEN CONWAY COONEY, P.J.:

{¶1} Defendant-appellant, Ronald Sharp (“Sharp”), appeals his sentence. Finding no merit to the appeal, we affirm.

{¶2} In November 2003, Sharp was charged with nineteen counts of gross sexual imposition and five counts of kidnapping.¹ The matter proceeded to a jury trial, where he was found guilty of three counts of gross sexual imposition and two counts of kidnapping.

{¶3} In February 2004, the trial court sentenced Sharp to four years in prison for each gross sexual imposition count, to be served concurrently, and nine years in prison for each kidnapping charge, to be served concurrently. The trial court ordered that the kidnapping charges be served consecutively to the gross sexual imposition charges for an aggregate sentence of thirteen years.²

{¶4} In March 2004, Sharp appealed his convictions and sentence in *State v. Sharp*, Cuyahoga App. No. 84346, 2005-Ohio-390. We affirmed the lower court’s decision, holding that the facts of the case sufficiently supported the findings and consecutive terms imposed by the trial court. However, the sentence was reversed on the authority of *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470 in May 2006, and the case was remanded for resentencing.

¹ Each kidnapping charge carried a sexual motivation specification.

² Sharp was also classified as a sexual predator.

{¶5} In December 2006, Sharp was resentenced to one year in prison for each gross sexual imposition count, to be served consecutively, and nine years in prison for each kidnapping charge, to be served concurrently. The trial court ordered that the kidnapping charges be served consecutively to the gross sexual imposition charges for an aggregate sentence of twelve years in prison.

{¶6} Sharp appeals again, raising one assignment of error in which he argues that the trial court erred by ordering him to serve a consecutive sentence without making the appropriate findings required by R.C. 2929.14(E)(4). He complains that the trial court “made no findings at all.” Accordingly, he maintains that the court should have imposed concurrent sentences or no additional sentence at all.

{¶7} However, in *Foster*, supra, at ¶¶61, 64, and 67, the Ohio Supreme Court held that judicial fact-finding to overcome a consecutive sentence is unconstitutional in light of *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403. In *Foster*, the Court also severed and excised, among other statutory provisions, R.C. 2929.14(E), because imposing consecutive sentences requires judicial fact-finding. *Id.*, applying *United States v. Booker* (2005), 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621; *Blakely*, and *Apprendi v. New Jersey* (2000), 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435. “After the severance, judicial fact-finding is not required before a prison term may be imposed within the basic ranges of R.C. 2929.14(A) based upon a jury verdict or admission of the defendant.” *Id.* at ¶¶99. As a result, “trial courts have full discretion to impose a prison sentence within the

statutory range and are no longer required to make findings and give reasons for imposing maximum, consecutive or more than the minimum sentence.” *Foster* at paragraph seven of the syllabus, *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, at paragraph three of the syllabus. Therefore, we reject Sharp’s argument.

{¶8} Sharp also argues that since his criminal conduct pre-dates *Foster*, this court is precluded from applying *Foster*’s remedy because of the Due Process and Ex Post Facto Clauses of the United States Constitution.

{¶9} As we noted in *State v. Mallette*, Cuyahoga App. No. 87894, 2007-Ohio-715, discretionary appeal not allowed, 115 Ohio St.3d 1439, 2007-Ohio-5567, *Foster* addressed the constitutionality of sentences imposed pursuant to S.B. 2, effective July 1, 1996.³ In *Mallette*, we concluded that the remedial holding of *Foster* did not violate the defendant’s due process rights or the ex post facto principles of the United States Constitution because:

“Mallette [the defendant] had notice that the sentencing range was the same at the time he committed the offenses as when he was sentenced. *Foster* did not judicially increase the range of his sentence, nor did it retroactively apply a new statutory maximum to an earlier committed crime, nor did it create the possibility of consecutive sentences where none existed.” *Id.*

{¶10} Similarly, in the instant case, Sharp had notice that the sentencing

³ S.B. 2 is applicable to all offenses committed on or after that date. See *State v. Rush*, 83 Ohio St.3d 53, 1998-Ohio-423, 697 N.E.2d 634, certiorari denied (1999), 525 U.S. 1151, 119 S.Ct. 1052, 143 L.Ed.2d 58.

range was the same at the time he committed the offenses as when he was sentenced. The application of *Foster* did not judicially increase the range of his sentence. As a result, we find that *Foster* did not deprive Sharp of his liberty without due process or violate the Ex Post Facto Clause.

{¶11} Therefore, we overrule the sole assignment of error.

Accordingly, judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

COLLEEN CONWAY COONEY, PRESIDING JUDGE

CHRISTINE T. McMONAGLE, J., and
MARY J. BOYLE, J., CONCUR