

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 89823

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MORRIS EDWARDS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-470398

BEFORE: Blackmon, J., Sweeney, A.J., and Celebrezze, J.

RELEASED: April 17, 2008

JOURNALIZED:

[Cite as *State v. Edwards*, 2008-Ohio-1831.]

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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).
PATRICIA ANN BLACKMON, J.:

{¶ 1} Appellant Morris Edwards appeals the consecutive sentence imposed
by the trial court. He assigns the following error for our review:

“I. Morris Edwards was denied his liberty without due process and his right not to be subjected to punishment in violation of the ex post facto clause of the United States Constitution by the imposition of consecutive sentences.”

{¶ 2} Having reviewed the record and pertinent law, we affirm Edwards’ sentence. The apposite facts follow.

{¶ 3} The Cuyahoga County Grand Jury indicted Edwards for one count of aggravated burglary and one count of robbery both with repeat violent offender specifications and notices of prior conviction. Edwards was also indicted for two counts of menacing by stalking.

{¶ 4} The jury found Edwards guilty of all four counts. The trial court imposed a six-year sentence for the aggravated burglary count, a three-year sentence for the robbery count, and one-year sentence for the menacing by stalking count. The trial court ordered the sentences to be served consecutively, except for one count of the menacing by stalking, which resulted in a total of ten years in prison.

{¶ 5} Edwards appealed his convictions and sentence to this court. On November 2, 2006, this court affirmed the convictions, but remanded the matter for resentencing¹ pursuant to the Ohio Supreme Court’s decision in *State v. Foster*.²

{¶ 6} At the resentencing hearing, Edwards argued that *Foster* should not apply to his case because he committed the crimes prior to the decision in *Foster*.

¹*State v. Edwards*, Cuyahoga App. No. 87587, 2006-Ohio-5726.

²*State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856.

The trial court found no merit to the argument and reimposed the consecutive sentence of ten years.

Consecutive Sentence

{¶ 7} In his sole assigned error, Edwards argues that the trial court erred when it resentenced him. Specifically, Edwards argues that his due process rights were violated by the ex post facto application of *State v. Foster*.³

{¶ 8} This court has repeatedly held that applying the remedial holding in *Foster* to a criminal defendant does not violate his due process rights or ex post facto principles.⁴ We follow these decisions and reject Edwards’ argument. Accordingly, Edwards’ first assigned error is overruled.

Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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.

³Id.

⁴See, *State v. Mallette*, Cuyahoga App. No. 87894, 2007-Ohio-715, discretionary appeal not allowed, 115 Ohio St.3d 1439, 2007-Ohio-5567; *State v. Humphrey*, Cuyahoga App. No. 89476, 2008-Ohio-685; *State v. Hibbitt*, Cuyahoga App. Nos. 89497 & 89885, 2008-Ohio-680; *State v. Dawson*, Cuyahoga App. No. 88485, 2007-Ohio-2761 (where we cited all Ohio appellate courts that also reached the same conclusion); *State v. Stokes*, Cuyahoga App. No. 88939, 2007-Ohio-5063; *State v. Velasquez*, Cuyahoga App. No.

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

PATRICIA ANN BLACKMON, JUDGE

JAMES J. SWEENEY, A.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR