Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94187

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JAMES VARHOLICK

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-526692

BEFORE: Blackmon, J., McMonagle, P.J., and Jones, J.

RELEASED AND JOURNALIZED: October 21, 2010

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PATRICIA ANN BLACKMON, J.:

{¶ 1}   Appellant James Varholick appeals his sentence for his conviction for operating a motor vehicle under the influence of alcohol and assigns the following error for our review:

{¶ 2}   **"The trial court erred by imposing consecutive sentences."**

{¶ 3}   Having reviewed the record and pertinent law, we affirm Varholick's sentence.   The apposite facts follow.

Facts

{¶ 4} Varholick was charged in a two-count indictment alleging two counts of driving while under the influence. The second count included a furthermore clause that he had a previous conviction for driving while under the influence. He entered a plea to the second count and in exchange, the first count was dismissed.

{¶ 5} At the hearing, Varholick admitted that he was on probation for a prior conviction for driving while under the influence when he committed the charge that was the subject of the plea. He was sentenced to 30 months in prison for his probation violation. The trial court sentenced Varholick to four years in prison to be served consecutive to the 30 months he received for his probation violation.

Consecutive Sentence

{¶ 6} In his sole assigned error, Varholick contends his sentence was contrary to law because the trial court failed to set forth its reasons for imposing consecutive sentences. He admits that *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, specifically held that such findings were not required, but relies on *Oregon v. Ice* (2009), 555 U.S. ___, 129 S.Ct. 711, 172 L.Ed.2d 517, to argue that *Foster* was incorrect and should be overturned.

{¶ 7} This court has repeatedly chosen to apply the holding in *Foster* rather than *Ice* and reserve any reconsideration for the Ohio Supreme Court.

Specifically, in *State v. Woodson*, Cuyahoga App. No. 92315, 2009-Ohio-5558, this court stated: "We have responded to *Oregon v. Ice* in several recent decisions and concluded that we decline to depart from the pronouncements in *Foster* until the Ohio Supreme Court orders otherwise." Id. at ¶33, citing *State v. Reed*, Cuyahoga App. No. 91767, 2009-Ohio-2264; *State v. Robinson*, Cuyahoga App. No. 92050, 2009-Ohio-3379; *State v. Eatmon*, Cuyahoga App. No. 92048, 2009-Ohio-4564; *State v. Moore*, Cuyahoga App. No. 92654, 2010-Ohio-770.

{¶ 8} Until the Ohio Supreme Court addresses the issue, we will continue to follow the precedent established in this district.[1] Accordingly, Varholick's 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.

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[1]Review of this issue is pending before the Ohio Supreme Court. See *State v. Hodge*, Ohio Supreme Court Case No. 2009-1997.

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

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PATRICIA ANN BLACKMON,   JUDGE

CHRISTINE T. McMONAGLE, P.J., and
LARRY A. JONES, J., CONCUR