

[Cite as *State v. Wilson*, 2010-Ohio-5585.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 93859 and 93860

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JOMO WILSON

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeals from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-518793 and CR-521422-B

BEFORE: Sweeney, J., Gallagher, A.J., and McMonagle, J.

RELEASED AND JOURNALIZED: November 18, 2010

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JAMES J. SWEENEY, J.:

{¶ 1} In this appeal, defendant-appellant Jomo Wilson (“defendant”) seeks to have his consecutive sentences vacated and the matter remanded for resentencing. For the reasons that follow, we affirm. Because the assignments of error are interrelated, we address them together for ease of discussion.

{¶ 2} “Assignment of Error No. I: The trial court erred by imposing consecutive sentences without making the findings required under R.C. 2929.14(E)(4), R.C. 2929.19(B)(2)(c), Crim.R. 32(A)(4), and the Fourteenth Amendment to the United States Constitution.”

{¶ 3} “Assignment of Error No. II: Trial counsel and appellate counsel were ineffective for failing to raise winning issues.”

{¶ 4} Defendant seeks reversal on two basis: (1) for the imposition of consecutive sentences in the absence of the trial court making the statutory findings of R.C. 2929.14(E)(4); or (2) due to alleged ineffective assistance of counsel for failure to object to the imposition of consecutive sentences in the absence of the statutory findings.

{¶ 5} As a result of the Ohio Supreme Court’s decision in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, Ohio courts have not been required to make the statutory findings of R.C. 2929.14(E)(4) prior to imposing consecutive sentences. Defendant contends that the United States Supreme Court decision, *Oregon v. Ice* (2009), 555 U.S. _____, 129 S.Ct. 711, 172 L.Ed.2d 517, effectively overruled *Foster*.

{¶ 6} This court has addressed and consistently overruled these arguments; most recently in *State v. Banna*, Cuyahoga App. No. 93871, 2010-Ohio-4887.¹ Based on this precedent we overrule appellant’s assignments of error, deferring the determination of *Ice*’s application to Ohio sentencing law for

¹ Accord *State v. Hundley*, 1st Dist. Nos. C-090760 and C-090761, 2010-Ohio-4640; *State v. Sabo*, 3d Dist. No. 14-09-33, 2010-Ohio-1261, at ¶34-42; *State v. Starett*, 4th Dist. No. 07CA30, 2009-Ohio-744, at ¶35; *State v. Lenoir*, 5th Dist. No. 10CAA010011 2010-Ohio-4910, ¶59; *State v. Lewis*, 6th Dist. Nos. L-09-1224 and L-09-1225, 2010-Ohio-4202; *State v. Nieves*, 9th Dist. No. 08CA009500, 2009-Ohio-6374, at ¶52; *State v. Nuh*, 10th Dist. No. 10AP-31, 2010-Ohio-4740, *State v. Moncoveish*, 11th Dist. No. 2008-P-0075, 2009-Ohio-6227, at ¶21; and *State v. Woodrey*, 12th Dist. No. CA2010-01-008, 2010-Ohio-4079.

the Ohio Supreme Court. See, e.g., *State v. Robinson*, Cuyahoga App. No. 92050, 2009-Ohio-3379, at ¶29 (concluding that, in regard to *Ice*, “we decline to depart from the pronouncements in *Foster*, until the Ohio Supreme Court orders otherwise”); see, also, *State v. Elmore*, 122 Ohio St.3d 472, 2009-Ohio-3478, 912 N.E.2d 582, ¶35 (“*Foster* did not prevent the trial court from imposing consecutive sentences; it merely took away a judge’s duty to make findings before doing so. The trial court thus had authority to impose consecutive sentences on *Elmore*.”)

Judgment affirmed.

It is ordered that appellee recover from appellant its 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 Court of Common Pleas 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.

JAMES J. SWEENEY, JUDGE

SEAN C. GALLAGHER, A.J., and
CHRISTINE T. McMONAGLE, J., CONCUR