

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94914

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

HEATH DAVIS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-524282

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

RELEASED AND JOURNALIZED: March 10, 2011

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PATRICIA ANN BLACKMON, P.J.:

{¶ 1} Appellant Heath Davis appeals the trial court's imposition of maximum, consecutive sentences and assigns the following error for our review:

“The trial court erred and appellant was prejudiced by imposition of maximum and consecutive sentences in contravention of O.R.C. 2929.14(E)(4).”

{¶ 2} Having reviewed the record and pertinent law, we affirm Davis's sentence.

The apposite facts follow.

Facts

{¶ 3} Davis was indicted in two separate cases, Case Nos. CR-524282 and CR-526023.¹ In Case No. CR-524282, he was charged with one count of kidnapping, attempted rape, and felonious assault, and two counts of aggravated burglary. The charges arose from his vicious, unprovoked beating of a store clerk downtown in the middle of the day. The victim sustained injuries requiring her to be hospitalized for five days. She suffered bleeding on her brain, a broken nose, two black eyes, and facial lacerations.

{¶ 4} In Case No. CR-526023, he was indicted for one count of robbery, assault, and aggravated menacing, and two counts of theft. These charges arose from his stealing an 84-year old woman's car to escape the scene of the beating.

{¶ 5} The two cases were joined for trial, and the matter proceeded to a jury trial. The trial court granted the defendant's Crim.R. 29 request as to the aggravated burglary, kidnapping, attempted rape, and aggravated menacing counts. The jury found Davis guilty of one count of felonious assault, robbery, and theft of a vehicle. They found him not guilty of assaulting the car-theft victim. After a presentence investigation report was obtained, the trial court proceeded to sentence Heath.

{¶ 6} The trial court sentenced Davis to 12 months for the car theft, which merged with the four years he received for the robbery charge. In addition, he was

¹ Prior to trial, Case No. CR-526023 was consolidated with Case No. CR-524282; therefore, Case No. CR-524282 became the number for both cases.

sentenced to eight years for the felonious assault charge to run consecutive to the other counts for a total of 12 years in prison.

Sentence

{¶ 7} In his sole assigned error, Davis argues that the trial court was required to make findings pursuant to R.C. 2929.14(E)(4) before imposing consecutive terms for his convictions. He claims the court’s failure to do so mandates reversal of his sentence.

{¶ 8} As authority for his argument, Davis cites *Oregon v. Ice* (2009), 555 U.S. 160, 129 S.Ct. 711, 172 L.Ed.2d 517, and asserts that the United States Supreme Court’s decision has abrogated *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. He thus contends that the statutory findings required by R.C. 2929.14(E)(4) were revived by implication, because the Ohio legislature never repealed the statutory provisions that were excised by *Foster*.

{¶ 9} During the pendency of this appeal, the Supreme Court of Ohio resolved this issue in *State v. Hodge*, Slip Opinion No. 2010-Ohio-6320. In *Hodge*, the Supreme Court held: “The United States Supreme Court’s decision in *Oregon v. Ice* * * * does not revive Ohio’s former consecutive-sentencing statutory provisions, R.C. 2929.14(E)(4) and 2929.41(A), which were held unconstitutional in *State v. Foster*, * * *.” (Citations omitted.) *Id.* at second paragraph of syllabus. Accordingly, the trial court was not obligated to make findings prior to imposing consecutive sentences. Davis’s sole 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.

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

PATRICIA ANN BLACKMON, PRESIDING JUDGE

LARRY A. JONES, J., and
KATHLEEN A. KEOUGH, J., CONCUR