

[Cite as *State v. Owen*, 2011-Ohio-1363.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 94996**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**ROBERT F. OWEN**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-531284

**BEFORE:** Rocco, J., Sweeney, P.J., and Cooney, J.

**RELEASED AND JOURNALIZED:** March 24, 2011

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KENNETH A. ROCCO, J.:

{¶ 1} After entering pleas of no contest to eight counts of unlawful sexual conduct with minors, defendant-appellant Robert F. Owen appeals from the sentence the trial court imposed.

{¶ 2} Owen presents one assignment of error, arguing that the trial court failed to comply with statutory sentencing requirements in light of the United States Supreme Court's decision in *Oregon v. Ice* (2009), 555 U.S. 160,

129 S.Ct. 711, 172 L.Ed.2d 517. He contends *Ice* overturned the Ohio Supreme Court’s decision in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, and the statutory provisions *Foster* declared unconstitutional are revived.

{¶ 3} However, since the Ohio Supreme Court recently held in *State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, 941 N.E.2d 768, that *Ice* did not revive Ohio’s former consecutive-sentencing statutory provisions, his assignment of error is overruled. Owen’s sentence is affirmed.

{¶ 4} The record reflects Owen was indicted on eight counts of unlawful sexual conduct relating to two male minors. Each count alleged an offense against each victim that occurred monthly between June through September, 2005.

{¶ 5} Owen entered into a plea agreement. By its terms, he would plead no contest in exchange for the state’s decision not to pursue additional charges. After the trial court fully informed him of the constitutional rights he was waiving and the maximum penalty involved, Owen pleaded no contest to each count. The trial court accepted his pleas, found him guilty, and referred him to the court psychiatric clinic for a recommendation regarding disposition.

{¶ 6} When the case was called for sentencing, the trial court decided the appropriate sentence for Owen’s convictions was a total of six years, i.e., consecutive terms of nine months on each count. The trial court additionally classified Owen as a “Tier I” sexual offender.

{¶ 7} Owen appeals from his sentence with the following assignment of error:

**“I. In light of *Oregon v. Ice*, which overruled *State v. Foster*, as it applies to consecutive sentences, Appellant’s eight consecutive sentences were improperly imposed because the trial court failed to make the findings required under R.C. 2929.14(E)(4).”**

{¶ 8} Owen argues that the trial court erred in imposing consecutive sentences without providing findings and reasons in support of those findings.

Although he allows that *Foster* specifically held that such findings were not required, he relies on *Ice* to assert that *Foster* was incorrectly decided and must be overturned, thus reinstating R.C. 2929.14(E)(4), which *Foster* held unconstitutional.

{¶ 9} However, the Ohio Supreme Court has specifically addressed Owen’s argument in *Hodge*. *Hodge* held that the statutory provisions are not revived. *Id.*, paragraph two of the syllabus. Moreover, the supreme court

also held that, unless the General Assembly enacts new legislation requiring that findings be made, trial courts are not obligated to engage in judicial fact-finding prior to imposing consecutive sentences. *Id.*, paragraph three of the syllabus; see also, *State v. Townsend*, Cuyahoga App. No. 94473, 2011-Ohio-86.

{¶ 10} Owen’s assignment of error, accordingly, is overruled.

Affirmed.

It is ordered that appellee recover from 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.

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KENNETH A. ROCCO, JUDGE

JAMES J. SWEENEY, P.J., and  
COLLEEN CONWAY COONEY, J., CONCUR