

[Cite as *State v. Troupe*, 2011-Ohio-1689.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95275

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JAMES T. TROUPE

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-531477

BEFORE: Rocco, J., Kilbane, A.J., and Blackmon, J.

RELEASED AND JOURNALIZED: April 7, 2011

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KENNETH A. ROCCO, J.:

{¶ 1} After entering pleas of guilty to charges of resisting arrest, carrying concealed weapons (“CCW”), having weapons while under disability (“HWUD”), and drug possession with a firearm specification, defendant-appellant James Troupe appeals from the sentence the trial court imposed.

{¶ 2} Troupe 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. Troupe's sentence is affirmed.

{¶ 4} The record reflects Troupe originally was indicted in this case on thirteen counts. The first seven counts related to an incident alleged to have occurred on May 4, 2009 and charged Troupe with attempted murder and felonious assault with firearm specifications, HWUD, improperly handling firearms in a motor vehicle, and discharge of a firearm on prohibited premises. In relation to two other incidents, Count 8 charged Troupe with resisting arrest, Counts 9 and 11 charged him with CCW, Counts 10 and 12 charged him with HWUD, and Count 13 charged him with drug possession.

Counts 9 through 13 each also contained a forfeiture specification, and Count 13 contained a one-year firearm specification.

{¶ 5} On the day of the final pretrial hearing, the prosecutor notified the court that he would request dismissal of the first seven counts, since his office was unable to locate the victim. When the trial court agreed to the prosecutor’s request, Troupe elected to enter guilty pleas to the remaining counts. After the trial court fully informed him of the constitutional rights he was waiving and the maximum penalty involved, Troupe pleaded guilty to each count. The trial court accepted his pleas, found him guilty, and referred him to the probation department for a presentence report.

{¶ 6} When the case was called for sentencing, the trial court decided in light of Troupe’s criminal record that the appropriate sentence for his convictions in this case was a total of five years. The trial court first “merged” Count 9 into Count 10, and Count 11 into Count 12 pursuant to R.C. 2941.25(A). It then imposed a one-year term for the firearm specification, to be served prior to and consecutive with consecutive two-year terms on Counts 10 and 12; the trial court imposed a one-day jail term on Count 13 and gave Troupe credit for time served.

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

{¶ 8} “I. Appellant’s consecutive sentences are contrary to law and violative of due process because the trial court failed to make and articulate the findings and reasons necessary to justify it.”

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

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

{¶ 10} However, the Ohio Supreme Court has specifically addressed Troupe’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.

{¶ 11} Since the sentence imposed by trial court is neither contrary to law nor an abuse of discretion, Troupe’s assignment of error 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.

KENNETH A. ROCCO, JUDGE

MARY EILEEN KILBANE, A.J., and
PATRICIA ANN BLACKMON, J., CONCUR