

[Cite as *State v. Townsend*, 2011-Ohio-86.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 94473**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**ALBERT J. TOWNSEND**

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-531966

**BEFORE:** Blackmon, J., Rocco, P.J., and Boyle, J.

**RELEASED AND JOURNALIZED:** January 13, 2011

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## **ATTORNEYS FOR APPELLEE**

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**PATRICIA A. BLACKMON, J.:**

{¶ 1} Defendant-appellant, Albert Townsend (“Townsend”), appeals his sentence and assigns one error for our review. Having reviewed the record and pertinent law, we affirm his sentence. The apposite facts follow.

{¶ 2} In 2009, Townsend was charged with aggravated robbery, robbery, and having a weapon while under disability. The aggravated robbery and robbery charges were accompanied by one- and three-year firearm specifications. The

matter proceeded to a bench trial. The trial court convicted Townsend of all counts and sentenced him to a concurrent sentence of seven years in prison for the aggravated robbery and robbery charges and a mandatory consecutive three years in prison for the firearm specifications. The trial court also sentenced him to two years for having a weapon while under disability and ran that sentence consecutive to the ten years on the other counts, for an aggregate sentence of twelve years in prison.

{¶ 3} Townsend now appeals, raising one assignment of error for our review, in which he argues that the trial court erred in imposing consecutive sentences without providing findings and reasons in support of those findings. 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. 160, 129 S.Ct. 711, 172 L.Ed.2d 517, to argue that *Foster* was incorrectly decided and should be overturned.

{¶ 4} Recently, however, in *State v. Hodge*, Slip Opinion No. 2010-Ohio-6320, the Ohio Supreme Court held that the United States Supreme Court decision in *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 *Foster*. *Id.* at ¶39. Because the statutory provisions are not revived, trial court judges are not obligated to engage in judicial fact-finding prior to imposing consecutive sentences unless the General Assembly enacts new legislation requiring that findings be made. *Id.*

{¶ 5} Therefore, the trial court did not err in this case in ordering consecutive sentences.

{¶ 6} Accordingly, Townsend's assigned error is overruled.

Judgment affirmed.

It is ordered that appellee recover of 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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PATRICIA A. BLACKMON, JUDGE

KENNETH A. ROCCO, P.J., and  
MARY J. BOYLE, J., CONCUR