

[Cite as *State v. Haile*, 2010-Ohio-3972.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

OSHIKA HAILE

Defendant-Appellant

JUDGES:

Hon. Sheila G. Farmer, P. J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. 09 CA 89

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 2008 CR 00734

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

August 23, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

KENNETH W. OSWALT
PROSECUTING ATTORNEY
KIMBERLY A. MCCARTY
ASSISTANT PROSECUTOR
20 South Second Street, Fourth Floor
Newark, Ohio 43055

ERIC BREHM
604 East Rich Street
Suite 2100
Columbus, Ohio 43215

Wise, J.

{¶1} Appellant Oshika B. Haile appeals her conviction and sentence on one count of possession of crack cocaine following a guilty plea.

{¶2} Appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶3} On December 14, 2008, the Licking County Grand Jury indicted Appellant, Oshika N. Haile on one count of aggravated possession of drugs, in violation of R.C. 2925.11, and one count of possession of crack cocaine, in violation of R.C. 2925.11.

{¶4} On June 1, 2008, Appellant filed a motion to dismiss, arguing that the disparities in felony levels and potential sentences between possession of crack cocaine versus possession of powder cocaine under the then-existing statutes were unconstitutional.

{¶5} A hearing was held on said motion to dismiss on June 2, 2009. After hearing the arguments put forth by counsel, the trial court denied the motion.

{¶6} The State agreed to dismiss the aggravated possession of drugs charge and amend the possession of crack cocaine charge from a second degree felony to a third degree felony in exchange for a guilty plea.

{¶7} By judgment entry filed June 2, 2009, the trial court found Appellant guilty and sentenced her to one year in prison, a six month license suspension and court costs.

{¶8} Appellant filed an appeal and this matter is now before this Court for consideration. Appellant's sole Assignment of error is as follows:

ASSIGNMENT OF ERROR

{¶9} "THE TRIAL COURT DID ERR BY FAILING TO GRANT DEFENDANT'S MOTION TO DISMISS."

I.

{¶10} Appellant claims the trial court erred in denying her motion to dismiss premised on the argument that the disparities in felony levels and potential sentences between possession of crack cocaine versus possession of powder cocaine are unconstitutional. We disagree.

{¶11} In *State v. Woodson*, Stark App.No. 2007CA00151, 2008-Ohio-3519, this court examined this exact issue. In *Woodson* at ¶30-31, this Court held the following:

{¶12} "In *State v. Rodgers* (May 21, 1998), Cuyahoga App. Nos. 72736, 72737, the court noted, 'that disparate sentencing penalties for crack and powder cocaine have been held to be constitutional by the many federal courts that have considered the issue. In particular, as noted in *United States v. Gaines* (6th Cir., 1977), 122 F.3d 324, the Sixth District 'has rejected every constitutional challenge * * *,' citing, *inter alia*, *United States v. Lloyd* (6th Cir., 1993), 10 F.3d 1197, 1220; *United States v. Tinker* (6th Cir., 1992), 985 F.2d 241, 242; and *United States v. Avant* (6th Cir., 1990), 907 F.2d 623, 627.' See, also *State v. Wilson*, 156 Ohio App.3d 1, 2004-Ohio-144, 804 N.E.2d 61.

{¶13} "Recently, in *Kimbrough v. United States* (2007), 128 S.Ct. 558, 169 L.Ed.2d 481 the United States Supreme Court held, 'Under *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 the cocaine Guidelines, like all other Guidelines, are advisory only, and the Fourth Circuit erred in holding the crack/powder

disparity effectively mandatory. A district judge must include the Guidelines range in the array of factors warranting consideration, but the judge may determine that, in the particular case, a within-Guidelines sentence is 'greater than necessary' to serve the objectives of sentencing, § 3553(a). In making that determination, the judge may consider the disparity between the Guidelines' treatment of crack and powder offenses.'"

{¶14} In the case sub judice, Appellant was found guilty of one count of possession of crack cocaine, a felony in the third degree. A felony in the third degree is punishable by "one, two, three, four, or five years." R.C. §2929.14(A)(3). The trial court sentenced Appellant to one year. There is no evidence to suggest the sentence was unreasonable or cruel and unusual.

{¶15} Based upon this Court's decision in *Woodson*, the sole assignment of error is denied.

{¶16} The judgment of the Court of Common Pleas of Licking County, Ohio is hereby affirmed.

By: Wise, J.

Farmer, P. J., and

Delaney, J., concur.

JUDGES

