

OHIO COURT OF APPEALS, EIGHTH APPELLATE DISTRICT

State v. Edwards

2008 Ohio 1831 · No. 89823 · Decided April 17, 2008

SUMMARY

The court affirmed the consecutive sentence imposed on Morris Edwards after resentencing. Edwards argued that applying State v. Foster retroactively violated due process and the ex post facto clause, but the court rejected this argument based on prior precedent.

CASE DETAILS

COURT	Ohio Court of Appeals, Eighth Appellate District
WRITING FOR THE COURT	Patricia Ann Blackmon; James J. Sweeney; Frank D. Celebrezze Jr.
JURISDICTION	Ohio
DECIDED	April 17, 2008
DOCKET	89823
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment resentencing the defendant after a remand.
PRECEDENTIAL VALUE	unpublished
PARTIES	Morris Edwards v. State of Ohio

TOPICS

- ex post facto
- due process
- sentencing
- criminal procedure
- constitutional law

PRACTICE AREAS

- criminal law
- appellate practice

QUESTIONS PRESENTED

- Whether the trial court erred by applying State v. Foster to resentence Edwards for crimes committed before that decision, in violation of due process and the ex post facto clause.

HOLDINGS

- This court has repeatedly held that applying the remedial holding in Foster to a criminal defendant does not violate his due process rights or ex post facto principles.

KEY QUOTATIONS

“This court has repeatedly held that applying the remedial holding in Foster to a criminal defendant does not violate his due process rights or ex post facto principles.” (¶ 8)

FACTUAL BACKGROUND

Edwards was indicted for aggravated burglary, robbery, and two counts of menacing by stalking, all with repeat violent offender specifications. A jury found him guilty on all counts. The trial court sentenced him to six years for aggravated burglary, three years for robbery, and one year for each menacing by stalking count, with all but one menacing count running consecutively, for a total of ten years. After the Ohio Supreme Court's decision in *State v. Foster*, his case was remanded for resentencing. At the resentencing hearing, Edwards objected to the application of *Foster* because his crimes predated that decision, but the trial court reimposed the consecutive sentence.

PROCEDURAL HISTORY

The jury found Edwards guilty of aggravated burglary, robbery, and two counts of menacing by stalking. The trial court imposed consecutive sentences totaling ten years. On prior appeal, this court affirmed the convictions but remanded for resentencing pursuant to *State v. Foster*. At resentencing, the trial court reimposed consecutive sentences. Edwards appeals again, arguing that the retroactive application of *Foster* violates due process and ex post facto.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The case is remanded to the trial court for execution of the sentence. A special mandate is issued.

CASES CITED

- *State v. Edwards*, Cuyahoga App. No. 87587, 2006-Ohio-5726
- *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856
- *State v. Mallette*, Cuyahoga App. No. 87894, 2007-Ohio-715, discretionary appeal not allowed, 115 Ohio St.3d 1439, 2007-Ohio-5567
- *State v. Humphrey*, Cuyahoga App. No. 89476, 2008-Ohio-685
- *State v. Hibbitt*, Cuyahoga App. Nos. 89497 89885, 2008-Ohio-680
- *State v. Dawson*, Cuyahoga App. No. 88485, 2007-Ohio-2761
- *State v. Stokes*, Cuyahoga App. No. 88939, 2007-Ohio-5063
- *State v. Velasquez*, Cuyahoga App. No. 88748, 2007-Ohio-3913

OPINION

PER CURIAM.

JOURNAL ENTRY AND OPINION {¶ 1} Appellant Morris Edwards appeals the consecutive sentence imposed by the trial court. He assigns the following error for our review: *Page 3 "I. Morris Edwards was denied his liberty without due process and his right not to be subjected to punishment in violation of the ex post facto clause of the United States Constitution by the imposition of consecutive sentences." {¶ 2} Having reviewed the record and pertinent law, we affirm Edwards' sentence.

The apposite facts follow. {¶ 3} The Cuyahoga County Grand Jury indicted Edwards for one count of aggravated burglary and one count of robbery both with repeat violent offender specifications and notices of prior conviction. Edwards was also indicted for two counts of menacing by stalking. {¶ 4} The jury found Edwards guilty of all four counts.

The trial court imposed a six-year sentence for the aggravated burglary count, a three-year sentence for the robbery count, and one-year sentence for the menacing by stalking count. The trial court ordered the sentences to be served consecutively, except for one count of the menacing by stalking, which resulted in a total of ten years in prison. {¶ 5} Edwards appealed his convictions and sentence to this court.

On November 2, 2006, this court affirmed the convictions, but remanded the matter for resentencing¹ pursuant to the Ohio Supreme Court's decision in *State v. Foster*² {¶ 6} At the resentencing hearing, Edwards argued that *Foster* should not apply to his case because he committed the crimes prior to the decision in *Foster*. *Page 4 The trial court found no merit to the argument and reimposed the consecutive sentence of ten years.

Consecutive Sentence {¶ 7} In his sole assigned error, Edwards argues that the trial court erred when it resentenced him. Specifically, Edwards argues that his due process rights were violated by the ex post facto application of *State v. Foster*³ {¶ 8} This court has repeatedly held that applying the remedial holding in *Foster* to a criminal defendant does not violate his due process rights or ex post facto principles.⁴ We follow these decisions and reject Edwards' argument.

Accordingly, Edwards' first 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. *Page 5 A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. JAMES J. SWEENEY, A.J., and FRANK D. CELEBREZZE, JR., J., CONCUR 1 *State v. Edwards*, Cuyahoga App.

No. 87587, 2006-Ohio-5726. 2 State v. Foster, 109 Ohio St.3d 1, 2006-Ohio-856. 3 Id. 4 See, State v. Mallette, Cuyahoga App. No. 87894, 2007-Ohio-715, discretionary appeal not allowed, 115 Ohio St.3d 1439, 2007-Ohio-5567; State v. Humphrey, Cuyahoga App. No. 89476, 2008-Ohio-685; State v. Hibbitt, Cuyahoga App. Nos. 89497 89885, 2008-Ohio-680; State v. Dawson, Cuyahoga App.

No. 88485, 2007-Ohio-2761 (where we cited all Ohio appellate courts that also reached the same conclusion); State v. Stokes, Cuyahoga App. No. 88939, 2007-Ohio-5063; State v. Velasquez, Cuyahoga App. No. 88748, 2007-Ohio-3913. *Page 1