

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| PRECEDENTIAL VALUE    | unpublished                                                       |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