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**THIS CASE INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS A
CASE OF PUBLIC OR GREAT GENERAL INTEREST**

Kenneth Hodge must receive a new sentencing hearing that complies with Ohio's consecutive-sentencing laws, R.C. 2929.14(E)(4) and 2929.41(A). This Court erroneously severed those statutes as unconstitutional. *State v. Foster* (2006), 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, *overruled in part*, *Oregon v. Ice* (2009), __ U.S. __, 129 S.Ct. 711. These statutes were, and remain, constitutional and enforceable.

Members of this Court forecast the great public interest in the substantial constitutional issue in this case by calling for “repair [of] the damage done” to Ohio's sentencing law by *Foster*. *State v. Hairston* (2008), 118 Ohio St.3d 289, 297 (Moyer, C.J., Pfeiffer and Lanzinger, JJ., concurring). Part of “the damage done” by *Foster* occurred when R.C. 2929.14(E)(4) and 2929.41(A) were severed for violating the Sixth Amendment jury-trial guarantee. These statutes require specific judicial fact-finding to overcome the presumption favoring concurrent sentences before consecutive sentences may be imposed. *Foster's* sole justification for the extraordinary act of severing laws approved by Ohio's coordinate branches of government was the conclusion that such judicial fact-finding was unconstitutional under *Blakely v. Washington* (2004), 542 U.S. 296, 299. *Foster*, at ¶¶ 65-67.

In this case, 20-year-old Kenneth Hodge received consecutive sentences that effectively tripled his potential prison time from six to eighteen years. *Foster* stripped Hodge of the statutory presumption favoring concurrent sentences, and denied him the specific judicial fact-findings required to justify the stacked sentences. His case exemplifies *Foster's* damage to Ohio's sentencing plan. The aggregate harm is significant:

Consecutive prison terms are much more likely today than at any point in recent Ohio history as a result of removing the statutory cap on consecutive sentences, making stacking offenses easier without placing an offender in double jeopardy, *eliminating the presumption of concurrent terms and the findings previously required to support consecutive terms*, and reducing [the] likelihood that lengthy cumulative terms could be found to violate the 8th Amendment.

Diroll (2009), “Monitoring Sentencing Reform: Survey of Judges, Prosecutors, Defense Attorneys and Code Simplification,” at p. 27 (emphasis added). ODRC also cites *Foster* as causing “substantial inflationary pressure from increased length of stay” and requiring thousands of additional prison beds. Martin (2009), “Ohio Prison Population Projections and Intake Estimates: FY 2010 - FY 2018,” at pp. 8-9.

Oregon v. Ice repaired “the damage done” by *Foster*, at least with respect to consecutive sentencing. *Ice* held that the Sixth Amendment allows judicial fact-finding as the basis for imposing consecutive sentences. *Ice* eliminated the sole justification for *Foster*’s severing R.C. 2929.14(E)(4) and R.C. 2929.41(A). *Ice* rendered that severance a nullity. The effect is not that the severance “was bad law, but that it never was the law.” *Peerless Electric Co. v. Bowers* (1955), 164 Ohio St. 209, 210. The General Assembly never repealed these statutes post-*Foster*. Instead, the legislature retained them in eleven amendments, including two enacted post-*Ice*.

It is time for this Court to acknowledge that *Ice* partly overruled *Foster*, by remanding this case for resentencing under R.C. 2929.14(E)(4) and R.C. 2929.41(A). A Sixth Circuit panel already ruled that *Ice* bars attacks on consecutive sentences that are based on judicial fact-finders. *Evans v. Hodge*, 575 F.3d 560, 566 (6th Cir. 2009). This Court conceded in *Foster* that it is “constrained by the principles of separation of powers and cannot rewrite the statutes.” 109 Ohio St.3d at 30. This Court acknowledged that *Foster* conflicted with the legislative intent of S.B. 2, “particularly with respect to reducing sentencing disparities and promoting uniformity.”

Id. The *Hairston* concurrence also noted that the nearly “unfettered” post-*Foster* discretion in consecutive sentencing implicates prison overcrowding concerns and subjects Ohio’s elected judges to community pressure, 118 Ohio St.3d at 297 – pressure that is too often driven by victims’ socioeconomic status. *See* Spohn & Hemmens, *Courts: A Text/Reader* (2009), at 434.

Across Ohio, judges are waiting for this Court’s green light to enforce Ohio’s lawfully-enacted consecutive-sentencing statutes. Nine of Ohio’s twelve appellate districts have been asked if *Ice* requires judicial fact-findings to stack sentences. Most recognize that *Ice* contradicts *Foster* on this point. But two judges were confused by *State v. Elmore* (2009), Ohio 3478, ¶ 35. In *Elmore*, this Court refused to address the constitutionality of Ohio’s consecutive sentencing laws despite the state’s urging a decision “sooner rather than later” to benefit Ohio’s “courts, prosecutors and defendants[.]” *Id.* Those two judges read *Elmore* to indicate that *Ice* did not overrule *Foster* on this point. *State v. Eatmon*, Cuyahoga App. No. 92048, 2009 Ohio 4564, ¶ 25. A dissenting judge reasoned that *Ice* binds all Ohio courts, and required a new sentencing hearing under the consecutive-sentencing statutes. *Id.* at ¶¶ 32-36 (Dyke, J., dissenting in part).

The message from Ohio judges is clear. Absent this Court’s explicit instruction, the legality of post-*Foster* consecutive sentences is in limbo. Such uncertainty may inhibit judges from imposing consecutive sentences to avoid future reversal. The “damage done” by *Foster* continues to mount. Quick action from this Court will clear up the confusion and prevent another *Foster*-style backlog of resentencing cases. This Court should reverse this case *per curiam* under *Ice* and order resentencing pursuant to R.C. 2929.14(E)(4) and R.C. 2929.41(A) or, in the alternative, order briefing and argument on this substantial constitutional question.

STATEMENT OF THE CASE AND FACTS

In December 2007, 18-year-old Kenneth Hodge was working on his GED, helping his father with a construction business, and trying to enlist in the military. He had no felony record. Then he got drunk and made a terrible decision. He joined two other young black men in robbing a group of Boy Scouts who were selling Christmas trees in Cincinnati. One of Hodge's co-defendants stuck a sawed-off shotgun in a Boy Scout's face. Another co-defendant broke open the Scouts' cashbox and took \$130. Hodge did not wield the shotgun. He did not break into the cashbox. He did hit a Boy Scout and that Scout's father. There were no serious injuries.¹

In July 2008, Hodge pled guilty as charged to nine felonies. His five aggravated robbery charges merged with four robbery counts. Each charge carried gun specifications. In September 2008, Hodge received an eighteen-year sentence, comprising five consecutive three-year terms for the aggravated robbery counts and three years for the merged gun specifications. The judge made no fact-findings before imposing the five consecutive three-year sentences.²

Hodge was appointed counsel and timely appealed, arguing for a new sentencing hearing or, in the alternative, concurrent sentences, based on the partial overruling of *State v. Foster* by *Oregon v. Ice*.³ After briefing on the merits, the First District agreed that no judicial fact-findings were made, but affirmed Hodge's sentence. The court held that "[a]bsent a contrary decision by the Ohio Supreme Court, *Foster* still applies to consecutive sentences."⁴ This timely appeal follows. S.Ct.Prac.R. II § 1(A)(2)-(3).

¹ *State v. Hodge* (2008), No.B-0805818 (Hamilton County) Tpp. 10-16.

² *Id.* Tpp. 5-6, 30-31.

³ *State v. Foster* (2006), 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, *overruled in part*, *Oregon v. Ice* (2009), ___ U.S. ___, 129 S.Ct. 711.

⁴ *State v. Hodge* (16 Sept. 2009), Hamilton County App. No. C-080968, unreported. *See also State v. Lewis* (12th Dis., 2009), 2009-Ohio-4684, at ¶10, 2009 Ohio App. LEXIS 3962

LAW AND ARGUMENT

Proposition of Law: Before imposing consecutive sentences, Ohio trial courts must make the findings of fact specified by R.C. 2929.14(E)(4) to overcome the presumption favoring concurrent sentences in R.C. 2929.41(A).

Ohio's Consecutive-Sentencing Statutes Were, and Remain, Constitutional

Kenneth Hodge must receive a new sentencing hearing governed by R.C. 2929.14(E)(4) and R.C. 2929.41(A). *State v. Foster* erred in severing those statutes as unconstitutional under *Blakely v. Washington*.⁵ *Oregon v. Ice* upheld the constitutionality of judicial fact-finding as a prerequisite to consecutive sentencing. *Ice* expressly cited *Foster* as an example of Sixth Amendment analysis that the Court rejected. *Ice* held that *Blakely* applies to individual, discrete offenses, and does not apply to consecutive sentencing. In so ruling, *Ice* deferred to the “historical practice and the authority of States over administration of their criminal justice systems.” Specifically, *Ice* deferred to state legislatures and the “salutary objectives” of sentencing statutes, like S.B. 2, including the reduction of sentence length and disparity. 129 S.Ct. at 715-719 & n.7 (internal citations omitted).

Ice binds this Court on the constitutionality of Ohio’s consecutive-sentencing law under the Sixth Amendment. See *Minnesota v. National Tea Co.* (1940), 309 U.S. 551, 557 (U.S. Supreme Court rulings are dispositive on issues of federal constitutional law); *Deposit Bank v.*

(declining to follow *Ice* absent this Court’s directive); *State v. Krug* (11th Dis., 2009), 2009-Ohio-3815 at Fn1, 2009 Ohio App. LEXIS 3253 (same); *State v. Crosky* (10th Dis., 2009), 2009-Ohio-4216, at ¶ 8, 2009 Ohio App. LEXIS 3553 (same); *State v. Miller* (6th Dis., 2009), 2009-Ohio-3908, at ¶ 18, 2009 Ohio App. LEXIS 3332 (same); *State v. Williams* (5th Dis., 2009), 2009-Ohio-5296 at ¶ 19, 2009 Ohio App. LEXIS 4481 (same); *State v. Starett* (4th Dis., 2009), 2009-Ohio-744, at ¶ 34, 2009 Ohio App. LEXIS 612 (same); *State v. Davis* (2009), 2009 Ohio 4583, ¶ 32; 2009 Ohio App. LEXIS 3890 (same); but see *State v. Eatmon* (8th Dis., 2009), 2009-Ohio-4564 at ¶ 24, 2009 Ohio App. LEXIS 3858 (viewing this Court’s refusal to address *Ice*’s overruling of *Foster* in *State v. Elmore* as indicating that *Ice* “did not” overrule *Foster*).

⁵ *Oregon v. Ice* (2009), ___ U.S. ___, 129 S.Ct. 711, 716, overruling in part *State v. Foster* (2006), 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

Frankfort (1903), 191 U.S. 499, 517 (same); see also *State v. Storch*, 66 Ohio St.3d 280, 291, 1993-Ohio-38 (this Court “ignore[s] the words of the United States Supreme Court at our peril ... we must assume that the United States Supreme Court meant what it said.”). With respect to consecutive sentencing, *Ice* rendered *Foster* a nullity. See *Peerless Electric Co. v. Bowers* (1955), 164 Ohio St. 209, 210.

The chart below demonstrates that *Ice* overruled *Foster* with respect to consecutive sentencing:

<i>Point of Comparison</i>	<i>Ice</i>	<i>Foster</i>
Statute requires guided discretion in consecutive sentencing	✓	✓
Statute favors concurrent sentences	✓	✓
Statute requires judicial fact-finding to impose consecutive sentences	✓	✓
Statute specifies fact-finding related to course of conduct	✓	✓
Statute specifies fact-finding related to risk of recidivism	✓	✓
Statute specifies fact-finding related to harm caused	✓	✓
State Supreme Court rejects “discrete offense” limitation on <i>Blakely</i>	✓	✓
State Supreme Court finds judicial fact-finding violates 6 th Amendment under <i>Blakely</i>	✓	✓
U.S. Supreme Court grants certiorari, reverses State Supreme Court	✓	

Oregon provides for guided discretion in consecutive sentencing. So does Ohio. Oregon has a presumption favoring concurrent sentences. So does Ohio. Oregon’s presumption must be overcome by specified judicial fact-finding. So must Ohio’s. Oregon allows consecutive sentences even when the offenses arise from a continuous course of conduct. So does Ohio. Oregon’s fact-findings relate to victim harm and the risk of recidivism. So do Ohio’s. Compare Ore. Rev. Stat. § 137.123(1)-(5) (2007) with R.C. 2929.14(F)(4) and R.C. 2929.41(A). Oregon’s Supreme Court rejected the concept that *Blakely* applied only to discrete offenses and not to

cumulative sentencing. So did this Court. Oregon's Supreme Court then held the state's consecutive-sentencing statute unconstitutional under the Sixth Amendment. This Court did the same with respect to Ohio law. Both Courts were mistaken. *Ice*, 129 S.Ct. at 716-719 & n.7.

Foster erred in severing statutes that remained constitutional, were never repealed, and were retained in eleven separate post-*Foster* amendments by the General Assembly.⁶ *Foster* interfered with the General Assembly's intent to reduce sentencing length and to conserve scarce resources for incarcerating Ohio's worst offenders. Finally, *Foster* interfered with the General Assembly's intent to promote consistency and proportionality in sentencing. Because the trial court never found the facts required to justify Hodge's five consecutive sentences, he must receive a new sentencing hearing in which the presumption of concurrent sentences applies, R.C. 2929.41(A), unless and until that presumption is overcome by the statutorily-specified, prerequisite fact-findings. R.C. 2929.14(E)(4). *See Hicks v. Oklahoma* (1980), 447 U.S. 343, 346 (due process protects liberty interest in state compliance with prescribed sentencing procedures).

Foster Conflicted with the General Assembly's Legislative Intent in S.B. 2

Ice lauded the "salutary objectives" of promoting proportional sentencing and "reducing disparities in sentence length[.]" 129 S. Ct. at 719 (internal citations omitted). This was precisely the General Assembly's intent in S.B. 2: "creating consistency among judges and conserving correctional resources[.]" Griffin & Katz, *Sentencing Consistency: Basic Principles Instead of Numerical Grids: The Ohio Plan* (2002), 53 Case W. Res. L. Rev. 1, 30.

⁶ Am.Sub.II.B. 95 (effective August 3, 2006), Am.Sub.H.B. 137 (effective July 11, 2006), Am.Sub.H.B. 137 (effective August 3, 2006), Am.Sub.S.B. 260 (effective January 2, 2007), Sub.S.B. 281 (effective January 4, 2007), Am.Sub.H.B. 461 (effective April 4, 2007), Am.Sub.S.B. 10 (effective January 1, 2008), Sub.S.B. 184 (effective September 9, 2008), Sub.S.B. 220 (effective September 30, 2008), Am.Sub.II.B. 280 (effective April 7, 2009), Am.Sub.II.B. 130 (effective April 7, 2009).

Foster wreaked havoc with the legislature's "salutary objectives." The January 2009 assessment of the Ohio Sentencing Commission bluntly blamed *Foster's* "eliminating the presumption of concurrent terms and the findings previously required to support consecutive terms" for the fact that "[c]onsecutive prison terms are much more likely today than at any point in recent Ohio history[.]" Diroll (2009), "Monitoring Sentencing Reform: Survey of Judges, Prosecutors, Defense Attorneys and Code Simplification," at p. 27. ODRC concurs that "The data continue to point to an emerging upward trend overall in average sentence length" and that *Foster* caused a "substantial inflationary pressure from increased length of stay. The upward shift in sentencing patterns has so far grown steadily over time." Average sentences increased from one to seven months post-*Foster*, "with greater increases among the higher felony levels." This shift "translates to a prison population increase of about 6,700 beds." The data indicate that this increased burden on ODRC, which is directly attributable to *Foster*, will likely escalate with the rising population of F1-F3 felons. Martin (2009), "Ohio Prison Population Projections and Intake Estimates: FY 2010 - FY 2018," at pp. 8-9.

Nor has *Foster's* damage been limited to the increased burden on Ohio's correction system. *Foster* also interfered with S.B. 2's intent to promote consistency and proportionality. Compare Hodge's 18-year sentence to those ordered for Hamilton County voluntary manslaughter convictions on charges filed in 2008.⁷ Of these 20 defendants, all pled guilty, and

⁷ This Court can take judicial notice of the following Hamilton County court records, see *Klick v. Snaveley* (1928), 199 Ohio St. 308, 164 N.E. 233; *State v. Hardy*, No. B 0800191; *State v. Kues*, No. B 0800324 ; *State v. Daniels*, No. B 0801766; *State v. Cooper*, No. B 0802017; *State v. Jones*, No. B 0803366; *State v. Ingersol*, No. B 0802675; *State v. Moore*, No. B 0804365; *State v. Quezambra*, No. B 0805005; *State v. Sullivan*, No. B 0804934; *State v. Johnson*, No. B 0804934; *State v. Bambao*, No. B 0805966; *State v. Williams*, No. B 0805967; *State v. Richardson*, No. B 0806347; *State v. Dodds*, No. B 0806779; *State v. Weaver*, No. B 0807846; *State v. Walston*, No. B 0807960; *State v. Lee*, No. B 0808033; *State v. Sprawl*, B 0809372;

most received multiple violent felony convictions and gun specifications in addition to manslaughter. While Hodge's conduct was serious, each of these defendants was convicted of killing another human being. Yet only three of these 20 manslaughter sentences match or exceed Hodge's. The lowest sentence was 6 years. Half the defendants received sentences of 12 years or less.

Foster also interfered with S.B. 2's efforts to ameliorate racial disparities in Ohio's incarceration patterns. See Wooldredge, *et al.* (2003), *The Impact of S.B. 2 on Sentencing Disparities*, at p. 2. While incarceration rates dropped significantly post-S.B. 2, *id.* at 2, sentencing reforms gutted by *Foster* also appeared to reduce some aspects of racial disparities in criminal case outcomes for Ohioans. *Id.* at 91-92. These disparities have deep roots in Ohio's history. Emblematic is Ohio's first major legislative act following statehood: Passage of the infamous Black Code, which was replicated in other states in the Jim Crow era. See Berwanger (1967), *The Frontier Against Slavery: Western Anti-Negro Prejudice and the Slavery Extension Controversy* at pp. 18-32, 118-119.

More than a century later, this Court's 1999 *Report of the Commission on Racial Fairness*, produced in cooperation with the state Bar Association, revealed the continued perception of racial bias in the state's criminal justice system:

... many of Ohio's citizens, particularly its minority citizens, harbor serious reservations about the ability of Ohio's current legal system to be fair and even-handed in its treatment of all of the state's residents regardless of race ... *The*

State v. Benford, B 0809131; and *State v. Yett*, B 0809428.

disparity in the sentences handed down was a consistent criticism directed toward judges.

Id. at pp. 2, 8, 54 (emphasis added).

Predictable racial disparities in sentencing, which are well-documented in empirical studies that control for offense severity, criminal history, and other salient factors, include the following:

- Young, black and Latino males (especially if unemployed) are subject to particularly harsh sentencing compared to other offender populations;
- Black and Latino defendants are disadvantaged compared to whites with regard to legal-process related factors such as the “trial penalty,” sentence reductions for substantial assistance, criminal history, pretrial detention, and type of attorney;
- Black defendants convicted of harming white victims suffer harsher penalties than blacks who commit crimes against other blacks or white defendants who harm whites;
- Black and Latino defendants tend to be sentenced more severely than comparably situated white defendants for less serious crimes, especially drug and property crimes.

The Sentencing Project (2005), *Racial Disparities in Sentencing: A Review of the Literature*, at p. 2 (*citing* Spohn (2000), “Thirty Years of Sentencing Reform: The Quest for a Racially Neutral Sentencing Process,” *Criminal Justice* Vol. 3, at p. 453).

Significantly, victim status – including race and socioeconomic status – appears consistently as an extralegal influence in sentencing outcomes. Spohn & Hemmens (2009), *Courts: A Text/Reader* at p. 434. Overall, race is a powerful indirect or interactive factor in sentencing outcomes:

Racial minorities are sentenced more harshly than whites if they are young, male, and unemployed, have relatively low incomes, and have limited education. Clearly, defendants’ race, in conjunction with these other factors, influences judges’ perceptions of which offenders are most threatening, most likely to offend again, and most in need of formal control by the criminal justice system. The race or ethnicity of the offender also interacts with that of the victim; racial minorities

who victimize whites are sentenced more harshly than defendants in other combinations of offender race and victim race.

Pew Center on the States (2009), “One in 31: The Long Reach of American Corrections,” at pp. 12-13. Many of these factors, which sentencing reform was designed to address, were at play in the instant case. Yet the judge’s discretion in stacking Hodge’s sentences was unchecked by R.C. 2929.41(A)’s presumption favoring concurrent sentences and R.C. 2929.14(E)(4)’s required, specific judicial fact-findings.

Article II of the Ohio Constitution gives the General Assembly the authority to address such disparities by promoting consistency and proportionality in criminal sentencing. This Court presumes that “an entire statute is intended to be effective.” *Foster*, 109 Ohio St.3d 1, at 28; *see also* R.C. 1.47. Ohio’s consecutive sentencing law survived *Foster*, as overruled by *Ice*, and must be enforced in Ohio’s courts. Had R.C. 2929.41(A) and 2929.14(E)(4) been enforced in this case, Kenneth Hodge would have benefitted from a presumption that his sentences be served concurrently, and a corresponding potential sentence reduction from eighteen years to six. The judgment of the First District Court of Appeals must be reversed and Mr. Hodge must receive a sentence in compliance with Ohio’s consecutive-sentencing law.

CONCLUSION

For the foregoing reasons, Mr. Hodge respectfully asks this Court to reverse the decision below *per curiam* based on *Oregon v. Ice*, and remand for resentencing pursuant to R.C. 2929.14(E)(4) and 2929.41.(A). In the alternative, Mr. Hodge asks this Court to order briefing and oral argument on the issue of *Ice’s* overruling *Foster* with respect to Ohio’s consecutive-sentencing statutes.

Respectfully submitted,



Janet Moore (0080506)
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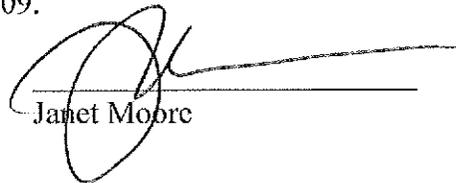
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CERTIFICATE OF SERVICE

I certify a copy of this document was served on the office of the Hamilton County Prosecuting Attorney this 30th day of October, 2009.



Janet Moore

APPENDIX

Entry Appointing Appellate Counsel.....A-1
Judgment Entry, First District Court of Appeals Case No. C080968 (16 September 2009).....A-2
Authorization of Appearance by Legal Intern.....A-3

Attachment not scanned

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

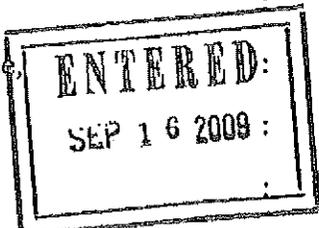
STATE OF OHIO,

Plaintiff-Appellee,

vs.

KENNETH HODGE,

Defendant-Appellant.



APPEAL NO. C-080968
TRIAL NO. B-0805818

JUDGMENT ENTRY.

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Kenneth Hodge appeals his convictions for aggravated robbery. We affirm the judgment of the trial court.

Hodge pleaded guilty to five counts of aggravated robbery with specifications. The trial court sentenced him to five consecutive three-year terms for the aggravated-robbery offenses and to a consecutive three-year term for a gun specification. The total sentence was 18 years' confinement.

In his sole assignment of error, Hodge asserts that the trial court erred when it imposed consecutive sentences without making the requisite factual findings under R.C. 2929.14(E) and 2929.41(A).

Hodge acknowledges that, in *State v. Foster*, the Ohio Supreme Court held that R.C. 2929.14 and 2929.41(A) were unconstitutional because they required judicial factfinding.² But he urges this court to conclude that *Foster* is no longer

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, paragraph three of the syllabus.



valid with respect to consecutive sentences in light of the United States Supreme Court's decision in *Oregon v. Ice*.³ In that case, the Court concluded that Oregon's sentencing statute, which, like Ohio's, requires judicial factfinding before the presumption of concurrent sentences can be overcome and consecutive sentences can be imposed, was constitutional.⁴ But we agree with other Ohio appellate districts that have considered the issue.⁵ We remain bound by the Ohio Supreme Court's decision in *Foster*. The Ohio Supreme Court has not directly addressed the effect of *Oregon v. Ice* on Ohio's sentencing law. Absent a contrary decision by the Ohio Supreme Court, *Foster* still applies to consecutive sentences. The trial court did not err when it imposed consecutive sentences without making findings of fact. The sole assignment of error is overruled.

Therefore, we affirm the trial court's judgment.

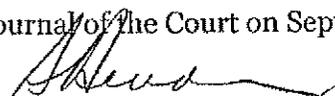
A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., SUNDERMANN and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on September 16, 2009

per order of the Court



Presiding Judge



³ (2009), ___ U.S. ___, 129 S.Ct. 711.

⁴ Id. at 719.

⁵ See *State v. Miller*, 6th Dist. No. L-08-1314, 2009-Ohio-3908; *State v. Robinson*, 8th Dist. No. 92050, 2009-Ohio-3379; *State v. Mickens*, 10th Dist. Nos. 08AP-743, 08AP-744, and 08AP-745, 2009-Ohio-2554; *State v. Krug*, 11th Dist. No. 2008-L-085, 2009-Ohio-3815.

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO,

: APPEAL NO. C080968
: FROM THE FIRST DISTRICT
: COURT OF APPEALS

Plaintiff

:

vs.

:

KENNETH HODGE,
Defendant

:

CLIENT & SUPERVISING ATTORNEY
AUTHORIZATIONS FOR APPEARANCE
BY LEGAL INTERN (Ohio Gov. Bar R. II)

I authorize Peter Link, a third-year law school student, to appear in court or at other proceedings, to investigate my case, and to prepare, co-sign, and file documents on my behalf. I am aware that this student is not a lawyer and that he is certified to serve as a legal intern and will appear under the supervision of an attorney licensed to practice before this Court, pursuant to Ohio Gov. Bar R. II.

10-2-09
DATE


CLIENT SIGNATURE

Kenneth Hodge
PRINT CLIENT NAME

I will carefully supervise all of this student's work. I authorize this student to appear in court and at other proceedings, to investigate the case, and to prepare, co-sign, and file documents. I will accompany the student at court appearances, sign all documents prepared by the student, assume professional responsibility for the student's work, and be prepared to supplement, if necessary, statements made by the student to the court or to opposing counsel. I certify that I meet the requirements of Ohio Gov. Bar R. II to serve as a supervising attorney.

10-19-09
DATE


ATTORNEY SIGNATURE

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