

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

vs.

JAMES MCCRAE,

Defendant-Appellant,

11-0790

On Appeal from the
MUSKINGUM County Court
of Appeals, FIFTH
Appellate District

Court of Appeals
Case No. CT2010-0037

NOTICE OF APPEAL OF APPELLANT JAMES MCCRAE

JAMES MCCRAE #629-278

NAME AND NUMBER

ROSS CORRECTIONAL INSTITUTION

INSTITUTION

PO BOX 7010

ADDRESS

CHILLICOTHE, OHIO 45601

CITY, STATE & ZIP

1-740-774-7050

PHONE

FILED
MAY 09 2011
CLERK OF COURT
SUPREME COURT OF OHIO

DEFENDANT-APPELLANT, PRO SE

D. MICHAEL HADDOX 0004913 - MUSKINGUM COUNTY PROSECUTING ATTORNEY

PROSECUTOR NAME

27 NORTH FIFTH STREET, SUITE 201

ADDRESS

ZANESVILLE, OHIO 43701

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PHONE

COUNSEL FOR APPELLEE, STATE OF OHIO

NOTICE OF APPEAL OF APPELLANT JAMES MCCRAE

Appellant JAMES MCCRAE hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the MUSKINGUM County Court of Appeals, FIFTH Appellate District, entered in Court of Appeals Case No. CT2010-0037 on MARCH 31, 2011.

This case raises a substantial constitutional question, involves a felony, and is one of public or great general interest.

James McCrae
SIGNATURE
JAMES MCCRAE #629-278
NAME AND NUMBER
ROSS CORRECTIONAL INST.
INSTITUTION
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ADDRESS
CHILLICOTHE, OHIO 45601
CITY, STATE & ZIP

DEFENDANT-APPELLANT, PRO SE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was forwarded by regular U.S. Mail to D. MICHAEL HADDOX, Prosecuting Attorney FOR MUSKINGUM COUNTY AT 27 N.FIFTH ST, SUITE 201, ZANESVILLE, OHIO 43701, this

5 day of May, 2011

James McCrae
SIGNATURE
JAMES MCCRAE #629-278
NAME AND NUMBER
DEFENDANT-APPELLANT, PRO SE

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,
Plaintiff-Appellee,

vs.

JAMES MCCRAE,
Defendant-Appellant

:
:
: Case No.
:
: On Appeal from the MUSKINGUM
: County Court of Appeals
: FIFTH Appellate District
:
: Court Appeals Case Nos. CT2010-0037

AFFIDAVIT OF INDIGENCY

I, JAMES MCCRAE, do hereby solemnly swear that I have presently this 2nd day of May, 2011, no means of financial support and no assets of any value and, therefore, cannot afford to pay for any legal services, fees or costs in the above-styled case. Pursuant to Rule XV, Section 3, of the Rules of Practice of the Supreme Court of Ohio, I am requesting that the filing fee and security deposit, if applicable, be waived.

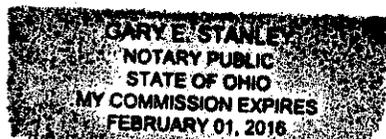
James McCrae 629-278
SIGNATURE
JAMES MCCRAE #629-278
NAME AND NUMBER
ROSS CORRECTIONAL INST.
INSTITUTION
PO BOX 7010
ADDRESS
CHILLICOTHE, OHIO 45601
CITY, STATE & ZIP

DEFENDANT-APPELLANT

Sworn to, or affirmed, and subscribed in my presence
this 2 day of May, 20 11.

Gary Stanley
Notary Public

My Commission Expires: 2-1-16



COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FILED
FIFTH DISTRICT
COURT OF APPEALS

MAR 31 2011

MUSKINGUM COUNTY, OHIO
TODD A. BICKLE, CLERK

STATE OF OHIO
Plaintiff-Appellee

JUDGES:
Hon. W. Scott Gwin, P.J.
Hon. William B. Hoffman, J.
Hon. John W. Wise, J.

-vs-

Case No. CT10-0037

JAMES MCCRAE
Defendant-Appellant

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Muskingum County Court
of Common Pleas, Case No. CR2009-0089

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Assistant Prosecuting Attorney
Muskingum County, Ohio
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Zanesville, Ohio 43702-0189

ROBERT D. ESSEX
1654 East Broad Street Suite 302
Columbus, Ohio 43203

Hoffman, J.

{¶1} Defendant-appellant James McCrae appeals his sentence entered by the the Muskingum County Court of Common Pleas. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE¹

{¶2} On April 26, 2010, Appellant entered pleas of guilty to one count of involuntary manslaughter, in violation of R.C. 2903.04(A), with a firearm specification; and one count of having a weapon under disability, in violation of R.C. 2923.13(A). The parties jointly recommended a fifteen year prison sentence.

{¶3} Following a hearing, the trial court imposed the maximum, consecutive prison sentence totaling eighteen years.

{¶4} Appellant now appeals, assigning as error:

{¶5} "I. IN LIGHT OF *OREGON V. ICE*, THE TRIAL COURT ERRED IN FAILING TO MAKE THE REQUIRED FINDINGS UNDER O.R.C. 2929.14(E)(4) TO JUSTIFY CONSECUTIVE SENTENCES."

{¶6} Appellant asserts in the wake of the United States Supreme Court decision in *Oregon v. Ice*, 555 U.S. 160, 129 S.Ct. 711, 172 L.Ed.2d 517, the Ohio Supreme Court decision in *State v. Foster*, 109 Ohio St.3d 1, 845 N.E.2d 470, 2006-Ohio-856, has been overruled and the fact finding provisions of R.C. 2929.14(E)(4) have been resurrected. We disagree.

{¶7} The Ohio Supreme Court recently addressed this issue in *State v. Hodge* (2010), 128 Ohio St.3d 1, holding:

¹ A rendition of the facts pertaining to the appeal is unnecessary for our disposition.

{¶18} "The United States Supreme Court's decision in *Oregon v. Ice* (2009), 555 U.S. 160, 129 S.Ct. 711, 172 L.Ed.2d 517, 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 *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470."

{¶19} The Ohio Supreme Court concluded 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 findings be made.

{¶10} Accordingly, Appellant's sole assignment of error is overruled, and the judgment of the Muskingum County Court of Common Pleas is affirmed.

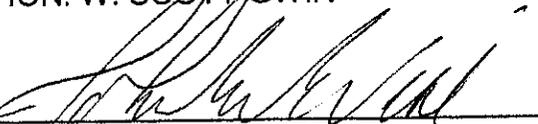
By: Hoffman, J.

Gwin, J. and

Wise, J. concur


HON. WILLIAM B. HOFFMAN


HON. W. SCOTT GWIN


HON. JOHN W. WISE

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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MUSKINGUM COUNTY, OHIO
TODD A. BICKLE, CLERK

STATE OF OHIO

Plaintiff-Appellee

-vs-

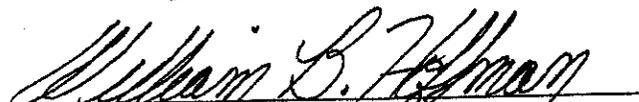
JAMES MCCRAE

Defendant-Appellant

JUDGMENT ENTRY

Case No. CT10-0037

For the reason stated in our accompanying Opinion, the judgment of the Muskingum County Court of Common Pleas is affirmed. Costs to Appellant.


HON. WILLIAM B. HOFFMAN


HON. W. SCOTT GWIN


HON. JOHN W. WISE