

ORIGINAL

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

vs.

JAMES MCCRAE,

Defendant-Appellant.

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CASE No. 11-0790

MOTION TO FILE DIMINISHED NUMBER OF COPIES AND FOR LEAVE TO
PROCEED IN FORMA PAUPERIS

Now comes the Appellant, JAMES MCCRAE, acting in Pro se; who moves this Honorable Court for leave to file a reduced number of copies of his pleadings, and to proceed In Forma Pauperis, in this action for the reasons set forth in the attached Memorandum and Affidavit of Indegency.

Respectfully Submitted,

James McCrae

JAMES MCCRAE #629-278

Ross Correctional Institution

Po Box 7010

Chillicothe, Ohio 45601

(Appellant, Pro se)

FILED
MAY 09 2011
CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED
MAY 09 2011
CLERK OF COURT
SUPREME COURT OF OHIO

MEMORANDUM IN SUPPORT

The Appellant, herein is proceeding before this Honorable Court in Pro-se, and is indigent as stated in his attached Affidavit of Indigency. Thus, the Appellant will not be able to afford the cost of this appeal or pay for the copying fees to properly accommodate this Court.

Due to the Appellant's Indigent status, he respectfully requests that he be allowed to file a reduced number of copies.

Wherefore, the Appellant prays that this Honorable Court grant this Motion and issue an order accordingly.

Respectfully Submitted,

James McCrae

JAMES MCCRAE #629-278

Ross Correctional Institution

Po Box 7010

Chillicothe, Ohio 45601

(Appellant, Pro se)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to File a Diminished Number of Copies, was sent by U.S. Mail on the 5 day of May, 2011, to the MUSKINGUM County Prosecutors Office at 27 NORTH FIFTH STREET, ZANESVILLE, OHIO 43701.

James McCrae

JAMES MCCRAE #629-278

Defendant-Appellant, Pro se

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FILED
FIFTH DISTRICT
COURT OF APPEALS
MAR 8 1 2011
MUSKINGUM COUNTY, OHIO
TODD A. BICKLE, CLERK

STATE OF OHIO

Plaintiff-Appellee

-vs-

JAMES MCCRAE

Defendant-Appellant

JUDGES:

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

Case No. CT10-0037

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

RON WELCH
Assistant Prosecuting Attorney
Muskingum County, Ohio
27 North Fifth Street, P.O.Box 189
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."

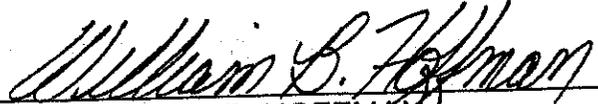
{19} The Ohio Supreme Court concluded trial court judges are not obligated to engage in judicial fact-finding prior to imposing consecutive sentences unless the General Assembly enacts new legislation requiring findings be made.

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

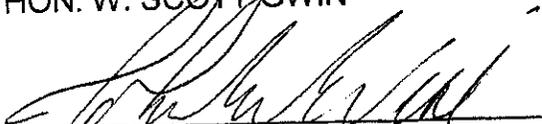
By: Hoffman, J.

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

FILED
FIFTH DISTRICT
COURT OF APPEALS
MAR 31 2011
MUSKINGUM COUNTY, OHIO
TODD A. BICKLE, CLERK

STATE OF OHIO

Plaintiff-Appellee

-vs-

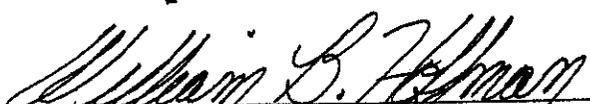
JAMES MCCRAE

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