

[Cite as *State v. Torres*, 2011-Ohio-350.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95646

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RAMON TORRES

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-525512

BEFORE: Gallagher, J., Blackmon, P.J., and Sweeney, J.

RELEASED AND JOURNALIZED: January 27, 2011
ATTORNEY FOR APPELLANT

R. Paul Cushion, II
75 Public Square, Suite 920
Cleveland, OH 44113

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Kristen L. Sobieski
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

SEAN C. GALLAGHER, J.:

{¶ 1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1, the trial court records, and briefs of counsel. Appellant Ramon Torres appeals his sentence from the Cuyahoga County Court of Common Pleas. For the reasons set forth herein, we affirm.

{¶ 2} In the early morning hours of June 5, 2005, Torres was driving along Howe Road in Strongsville, Ohio, when he struck two children in the street. Torres fled the scene of the accident, and passersby found the victims

and called for help. One of the victims, a minor child, was severely injured, suffering brain injury, multiple broken bones, a bruised lung, and lacerations requiring stitches. The boy's injuries caused him to miss school, and he now walks with a limp and suffers from migraine headaches.

{¶ 3} Police located Torres in his home several hours after the accident. Upon questioning, Torres responded that he was not involved. Later, Torres admitted he was the driver who committed the accident and had fled the scene because he panicked. All tests done on Torres several hours after the accident showed no alcohol or drugs in his system.

{¶ 4} Torres was charged with two counts of aggravated vehicular assault, third-degree felonies, and one count of failure to stop after accident, a fifth-degree felony. On September 2, 2009, Torres entered a guilty plea to Count 1 for aggravated vehicular assault, which had been amended to add the other victim's name,¹ and Count 3 for failure to stop after accident. On September 30, 2009, the trial court sentenced Torres to the maximum penalty: five years on Count 1, and one year on Count 3, to run consecutively.

The court noted that Torres had a prior conviction for driving on a suspended license and 17 prior traffic violations. The court also stated that because of Torres's failure to aid his fellow man and subsequently lying about his involvement, maximum, consecutive sentences were justified.

¹ The state dismissed the other count of aggravated vehicular assault (Count 2).

{¶ 5} Torres did not bring a direct appeal, but instead filed a motion for resentencing on July 8, 2010. The court denied Torres's motion. It is from this denial that Torres brings the instant appeal.

{¶ 6} Torres raises three assignments of error,² all related to the legality of his sentence. Because of their relatedness, we address them together.

{¶ 7} Torres argues that the trial court erred by sentencing him, as a first time offender, to maximum, consecutive sentences. He relies primarily on 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, which Torres argues overrules the Ohio Supreme Court's decision in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. We note that Torres filed his brief prior to the Ohio Supreme Court's recent decision in *State v. Hodge*, ___ Ohio St.3d ___, 2010-Ohio-6320.

{¶ 8} In *Hodge*, the supreme court held: "The United States Supreme Court's decision in *Oregon v. Ice* * * * 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*, * * *." (Citations omitted.) *Id.* at second paragraph of syllabus. Therefore, Torres's sentence is subject to review under post-*Foster* guidelines.

{¶ 9} As such, a trial court's imposition of maximum, consecutive sentences will not be found contrary to law, provided the sentences are within the statutory range. Furthermore, a trial court is not required to make findings to support its decision to impose maximum, consecutive prison terms.

{¶ 10} The trial court was within its authority to sentence Torres to the maximum term of five years for aggravated vehicular assault and one year for failure to stop after an accident. It was also within in its authority to run these sentences consecutively. Torres's three assignments of error are overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas 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.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

² See Appendix.

SEAN C. GALLAGHER, JUDGE

PATRICIA A. BLACKMON, P.J., and
JAMES J. SWEENEY, J., CONCUR

APPENDIX

“Assignment of Error No. 1:

“The trial court did not have jurisdiction, and/or actual authority, to sentence the appellant, a first time offender who has plead guilty to aggravated vehicular assault (pursuant to ORC _2903.08, an F-3) and failure to stop after an accident (pursuant to ORC _4549.02, an F-5) to a maximum consecutive sentence of six years (five years on the first count and one year on the second count) when the following apply:

- (A) The first offender was not under the influence of any alcohol or drugs of abuse at the time of the accident; and,
- (B) The first offender had not committed a violation of ORC _4511.19, or a substantially equivalent municipal ordinance, previously and/or at the time of the incident; and,
- (C) The first offender had not committed a violation of ORC _1547.11, or a substantially equivalent municipal ordinance, previously and/or at the time of the incident; and
- (D) The first offender had not committed a violation of Division (A)(3) of ORC _4561.15 or of a substantially equivalent municipal ordinance, previously and/or at the time of the incident; and,
- (E) The offense at issue was not committed in a construction zone; and,
- (F) There exists no evidence on the record showing that the first offender acted recklessly; and,
- (G) There exists no evidence on the record showing that the first offender was exceeding the speed limit at the time of the accident; and,
- (H) The first offender was not driving under suspension at the time of the incident.”

“Assignment of Error No. 2:

“The trial court lacked jurisdiction, and/or actual authority, to impose the maximum consecutive sentences upon a first offender, when the trial court failed to make a finding on the record in regard to why the first offender’s terms should run consecutively when such a sentence is contrary to the mandates [of] ORC

_2929.14 (B) and (C) where the first offender was not serving a prison term at the time of the offense, or had not previously served a prison term, and when the shortest prison term would not demean the seriousness of the offender's conduct, and would adequately protect the public from future crimes by the first offender or others, and where the offense at issue was clearly not the worst form of the [offense]."

"Assignment of Error No. 3:

"The trial court must resentence a first offender on a request by the first offender to do so, when the trial court is notified that the sentence originally imposed on the first offender was clearly contrary to law, and the trial court lacked jurisdiction and/or actual authority to sentence the first offender to maximum consecutive prison terms, and/or when this maximum consecutive sentence imposed by the trial court was patently in violation of *Oregon v. Ice* (2009), ___US___, 129 S.Ct. 711; *State v. Foster* (2006), 109 Ohio St.3d 1; *State v. Kalish* (2008), 120 Ohio St.3d 23; and, *State v. Moore* (2010), 185 Ohio App.3d 772."