

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

STATE OF OHIO,	:	APPEAL NO. C-070583
Plaintiff-Appellee,	:	TRIAL NO. B-0503051
vs.	:	<i>JUDGMENT ENTRY</i>
DANIEL R. CLAYTON,	:	
Defendant-Appellant.	:	

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

Defendant-appellant Daniel R. Clayton was convicted on two counts of vehicular assault after a no-contest plea. The offenses took place in March 2005. At a March 2006 hearing, the trial court sentenced Clayton to community control and informed Clayton that it would impose consecutive 18-month prison terms if he violated his community control.

In July 2007, Clayton entered a guilty plea to a community-control violation. The trial court revoked his community control and imposed consecutive 17-month prison terms. Clayton now appeals that sentence.

In his second assignment of error, which we address first, Clayton contends that his sentence was erroneous as a matter of law. Clayton recognizes that the sentence was allowable under the current Ohio felony-sentencing scheme as modified by the Ohio

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

Supreme Court in *State v. Foster*,² released in February 2006. Nonetheless, he argues that he would have received minimum and nonconsecutive prison terms pursuant to the law in force before *Foster* and, therefore, that the retroactive application of *Foster* violated his rights under the Ex Post Facto and Due Process Clauses of the United States and the Ohio Constitutions. This court rejected a similar argument in *State v. Bruce*,³ and we overrule the assignment of error on this authority.

In his first assignment of error, Clayton argues that he was denied the effective assistance of trial counsel where counsel failed to object to his sentence on ex post facto and due-process grounds. To prevail on this claim, Clayton must demonstrate that counsel's performance was deficient and that this deficient performance prejudiced him.⁴ Clayton cannot demonstrate the requisite deficient performance or prejudice, where his sentence did not violate his rights under the Ex Post Facto or Due Process Clause of the federal and state constitutions.⁵ Thus, we overrule the second assignment of error.

Accordingly, we affirm the trial court's judgment.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R.24.

HILDEBRANDT, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on September 26, 2008

per order of the Court _____.

Presiding Judge

² 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

³ 170 Ohio App.3d 92, 2007-Ohio-175, 866 N.E.2d 44.

⁴ See *Strickland v. Washington* (1984), 466 U.S. 668, 687-688, 104 S.Ct. 2052; *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373, paragraph two of the syllabus.

⁵ *Id.*