

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

STATE OF OHIO,	:	APPEAL NOS. C-100339
		C-100340
Plaintiff-Appellee,	:	TRIAL NOS. B-0906852
		B-0908446
vs.	:	
ANTONIO PORTIS,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

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

Defendant-appellant Antonio Portis pleaded guilty in the case numbered B-0906852 to aggravated murder with a firearm specification, to having a weapon while under a disability, and to aggravated robbery with a firearm specification. In the case numbered B-0908446, Portis pleaded guilty to attempted murder with a firearm specification. The trial court imposed an aggregate sentence of life in prison plus 38 years.

In Portis's single assignment of error, he argues that the trial court erred in imposing maximum, consecutive sentences. First, Portis argues that the trial court erred by imposing maximum, consecutive sentences without considering the purposes and principles of sentencing set forth in R.C. 2929.01 et seq. In reviewing Portis's sentence, we must determine whether the sentence imposed was contrary to

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

law, and if the sentence was not contrary to law, then we must determine whether the trial court abused its discretion in imposing it.<sup>2</sup>

Although trial courts have discretion to impose a prison sentence within the statutory range for an offense, trial courts must still consider the applicable statutes.<sup>3</sup> But the trial court need not specifically state on the record that it has considered all applicable statutes, including R.C. 2929.01 et seq., because we will presume that it did.<sup>4</sup> In this case, the trial court failed to explicitly state on the record that it had considered the principles and purposes of sentencing. Before the trial court imposed its sentence, however, the court ordered a presentence-investigation report and found that Portis had several prior adjudications. The trial court also listened to trial counsel's argument in mitigation. Moreover, the trial court informed Portis that he was likely to receive the maximum sentence for each offense before Portis pleaded guilty. Therefore we cannot say that the sentence imposed by the trial court was contrary to law, nor did the trial court act unreasonably, arbitrarily, or unconscionably in imposing the sentence.<sup>5</sup>

Second, Portis argues that the trial court erred in imposing consecutive sentences in light of the United States Supreme Court's decision in *Oregon v. Ice*.<sup>6</sup> But the Ohio Supreme Court recently rejected Portis's argument in *State v. Hodge*.<sup>7</sup> *Hodge* addressed the effect of *Oregon v. Ice* on Ohio's sentencing law and held that "[t]he United States Supreme Court's decision \* \* \* does not revive Ohio's former consecutive-sentencing statutory provisions, R.C. 2929.14(E)(4) and 2929.41(A),

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<sup>2</sup> *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, at ¶14 and 17.

<sup>3</sup> *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, paragraph seven of syllabus.

<sup>4</sup> *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, at ¶38.

<sup>5</sup> *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144.

<sup>6</sup> (2009), 55 U.S. 160, 129 S.Ct. 711.

<sup>7</sup> 128 Ohio St.3d 1, 2010-Ohio-6320, \_\_\_ N.E.2d \_\_\_, paragraph two of the syllabus.

which were held unconstitutional in *State v. Foster*.<sup>8</sup> Thus, Portis's argument is without merit after *Hodge*.

Therefore, we overrule Portis's assignment of error and affirm the judgment of the trial court.

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

**DINKELACKER, P.J., HILDEBRANDT and FISCHER, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on March 30, 2011  
per order of the Court \_\_\_\_\_  
Presiding Judge

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<sup>8</sup> Id.