

[Cite as *State v. Marshall*, 2005-Ohio-7106.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

The State of Ohio, :
 :
 Plaintiff-Appellee, : Case No. 05CA21
 :
 vs. : MEMORANDUM DECISION
 : AND JUDGMENT ENTRY
 Michael K. Marshall, :
 :
 Defendant-Appellant. : File Stamped Date: 12-15-05

APPEARANCES:

Kirk A. McVay, Columbus, Ohio for appellant.

P. Eugene Long, II, Pickaway County Prosecutor, Circleville, Ohio, for appellee.

Kline, J.:

{¶ 1} Michael K. Marshall appeals the Pickaway County Common Pleas Court's judgment sentencing him to the maximum term of eight years in prison for each of his two aggravated vehicular homicide convictions. Marshall asserts that we should reduce each sentence to the minimum of two years because the trial court, instead of a jury, made findings for a (1) non-minimum and (2) maximum sentence, in violation of *Blakely v. Washington* (2004), 542 U.S. 296. Specifically,

Marshall contends that the trial court's findings violate his right to a jury trial under the Sixth Amendment to the United States Constitution. Although we recognize that there is a split of authority among the appellate districts of Ohio, we disagree.

{¶ 2} As we have previously held, *Blakely* does not apply to Ohio's indeterminate sentencing scheme. See, e.g., *State v. Overby*, Lawrence App. No. 05CA5, 2005-Ohio-5714; *State v. Sideris*, Athens App. No. 04CA37, 2005-Ohio-1055; *State v. Wilson*, Washington App. No. 04CA18, 2005-Ohio-830; *State v. Wheeler*, Washington App. No. 04CA-1, 2004-Ohio-6598; *State v. Scheer*, 158 Ohio App.3d 432, 2004-Ohio-4792.

{¶ 3} Accordingly, we overrule Marshall's assignments of error and affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

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JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and that Appellee recover of 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 Pickaway County Common Pleas Court to carry this judgment into execution.

If the trial court or this court has previously granted a stay of execution of sentence and release upon bail, it is continued for a period of sixty days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of proceedings in that court. The stay as herein continued will terminate in any event at the expiration of the sixty-day period.

The stay shall terminate earlier if the appellant fails to file a notice of appeal with the Ohio Supreme Court in the forty-five day appeal period pursuant to Rule II, Sec.2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal before expiration of said sixty days, the stay will terminate as of the date of such dismissal.

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

Abele, P.J. and McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Roger L. Kline, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.