



Consecutive Sentences, Not Put on Ice

Author : Jamie Markham

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A number of people have asked me whether the United States Supreme Court's recent opinion in *Oregon v. Ice* (07-901) has any impact on North Carolina sentencing law. The short answer is, No. In *Ice*, the latest chapter in the *Blakely v. Washington*, 542 U.S. 296 (2004), saga, a 5–4 majority of the Justices held that a judge may impose consecutive sentences based on facts neither found by the jury nor admitted by the defendant.

Under Oregon law, multiple sentences are served concurrently unless the judge finds that the offenses were not part of the same course of conduct and resulted in separate harms. Mr. Ice argued that because his sentence could not be increased without that finding, it ought, under *Blakely*, to be found by a jury beyond a reasonable doubt. [Recall *Blakely's* holding: As a matter of the Sixth Amendment right to jury trial, any fact—other than a prior conviction—that increases the maximum punishment to which a defendant may be sentenced must be admitted by the defendant or proved beyond a reasonable doubt to a jury.] Justice Ginsburg's majority opinion disagreed, holding that as a matter of historical jury practice and respect for state sovereignty, the *Blakely* rule applies only to sentences for discrete crimes, not the decision to run sentences concurrently or consecutively. Justice Scalia wrote for the dissenters, arguing that the Court's decision makes for a "strange exception" to the *Blakely* rule when you consider that the consecutive/concurrent decision is often the one with the greatest impact on how long a defendant will actually be in prison.

As for North Carolina, aside from the relatively few statutes that require consecutive (e.g., habitual felon sentences) or concurrent (e.g., when all crimes are Class 3 misdemeanors) sentences, a judge's discretion to run sentences consecutively or concurrently is complete, and need not be supported by any finding whatsoever. So, even if the Supreme Court had ruled for the defendant in *Ice*, the decision wouldn't have required a change in our law.