

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- VS -	:	CASE NO. 2006-A-0049
LUKE HOLCOMB,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Ashtabula County Court of Common Pleas, Case No. 05 CR 279.

Judgment: Affirmed.

Thomas L. Sartini, Ashtabula County Prosecutor and *Shelley M. Pratt*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047 (For Plaintiff-Appellee).

Marie Lane, Ashtabula County Public Defender, 4817 State Road, #202, Ashtabula, OH 44004 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Luke Holcomb, appeals the Judgment Entry of Sentence of the Ashtabula County Court of Common Pleas, sentencing him to ten years imprisonment for a single conviction of Rape. For the following reasons, we affirm the decision of the court below.

{¶2} On September 26, 2005, Holcomb was indicted on seven counts of Rape, felonies of the first degree in violation of R.C. 2907.02(A)(1)(c); one count of

Rape with Specification, a felony of the first degree in violation of R.C. 2907.02(A)(1)(b); one count of Disseminating Matter Harmful to Juveniles, a felony of the fourth degree in violation of R.C. 2907.31(A)(3); and one count of Disseminating Matter Harmful to Juveniles, a felony of the third degree in violation of R.C. 2907.31(A)(3).

{¶3} On March 27, 2006, Holcomb entered a plea of guilty to one count of Rape. The State dismissed the remaining charges against him.

{¶4} On July 24, 2006, a sentencing hearing was held. At this time, Holcomb asserted he was entitled to the presumption of minimum prison sentence for an offender who has not previously served a jail term. R.C. 2929.14(B). The basis for Holcomb's argument was that the retroactive application of the Ohio Supreme Court's decision, *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, declaring R.C. 2929.14(B) unconstitutional, would violate the Ex Post Facto clause of the United States Constitution. The trial court did not make the findings required by R.C. 2929.14(B), although it considered the seriousness of Holcomb's conduct. The court imposed on Holcomb the maximum sentence for a first degree felony, ten years imprisonment. This appeal timely follows.

{¶5} On appeal, Holcomb raises the following assignment of error: "Appellant was entitled to a presumption of the minimum sentence pursuant to Ohio Revised Code Section 2929.14 since the retroactive application of *State v. Foster* violates the principles of ex post facto and due process."

{¶6} This court has previously rejected Holcomb's argument. See *State v. Green*, 11th Dist. Nos. 2005-A-0069 and 2005-A-0070, 2006-Ohio-6695; *State v. Elswick*, 2006-L-075, 2006-Ohio-7011.

{¶7} Holcomb's sole assignment of error is without merit.

{¶8} For the foregoing reasons, the judgment of the Ashtabula Court of Common Pleas, sentencing Holcomb to ten years imprisonment for Rape, is affirmed.

WILLIAM M. O'NEILL, J.,

COLLEEN MARY O'TOOLE, J.,

concur.