

THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- VS -	:	CASE NO. 2006-L-122
JOSEPH J. FILCHOCK,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 02 CR 000677.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor and *Alana A. Rezaee*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

R. Paul LaPlante, Lake County Public Defender and *Vanessa R. Clapp*, Assistant Public Defender, 125 East Erie Street, Painesville, OH 44077 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, P.J.

{¶1} Appellant, Joseph J. Filchock, appeals from the judgment entry of the Lake County Common Pleas Court. That court resentenced Filchock following this court's decision¹ from a direct appeal that ordered him to be resentenced pursuant to

1. *State v. Filchock*, 166 Ohio App.3d 611, 2006-Ohio-2242.

State v. Foster, 109 Ohio St.3d 1, 2006-Ohio-856. On review, we affirm the judgment entry of the trial court.

{¶2} Filchock had been convicted of aggravated vehicular homicide, vehicular homicide, leaving the scene of an accident, driving with a prohibited blood alcohol content, and driving under the influence of alcohol. The trial court imposed a six-year sentence for the conviction for aggravated vehicular homicide, and a six-month sentence for each of the other convictions, all sentences to run concurrently.

{¶3} This court's prior decision directed the trial court to reconsider only the six-year sentence for aggravated vehicular homicide because it was a more-than-the-minimum sentence. *Filchock*, supra at ¶45. All other sentences were to remain undisturbed. *Id.*

{¶4} At resentencing, the trial court imposed the same sentence of six years that was formerly adjudicated against him for the aggravated vehicular homicide conviction.

{¶5} In this appeal, Filchock challenges the more-than-the-minimum sentence imposed by the trial court. He has filed a timely appeal and raises the following assignments of error:

{¶6} “[1.] The trial court erred when it sentenced the defendant-appellant to more-than-the-minimum prison terms in violation of the due process and ex post facto clauses of the Ohio and United States Constitutions.

{¶7} “[2.] The trial court erred when it sentenced the defendant-appellant to more-than-the-minimum prison terms in violation of defendant-appellant's right to due process.

{¶8} “[3.] The trial court erred when it sentenced the defendant-appellant to more-than-the-minimum prison terms based on the Ohio Supreme Court’s severance of the offending provisions under [*State v.*] *Foster*, which was an act in violation of the principle of separation of powers.

{¶9} “[4.] The trial court erred when it sentenced the defendant-appellant to more-than-the-minimum prison terms contrary to the rule of lenity.

{¶10} “[5.] The trial court erred when it sentenced the defendant-appellant to more-than-the-minimum prison terms contrary to the intent of the Ohio legislators.”

{¶11} Though Filchok has couched his assignments of error in terms of “prison terms,” the only prison term that is germane to this appeal is the six-year prison term for aggravated vehicular homicide. Filchok did not challenge the other prison terms in his direct appeal and, therefore, they are to remain undisturbed. *Id.*

{¶12} The focal point of Filchok’s arguments in all of his assignments of error is the decision of the Supreme Court of Ohio in *Foster*, *supra*. In *Foster*, the Supreme Court of Ohio found certain statutes to be unconstitutional and applied a severance remedy to the offending statutes. *Id.* at paragraphs two, four, and six of the syllabus. Filchok asserts that his sentences are unconstitutional, because he committed his crimes prior to the Supreme Court of Ohio’s decision in *State v. Foster*, but was sentenced pursuant to the post-*Foster* version of R.C. 2929.14.

{¶13} This court recently addressed Filchok’s exact arguments in the case of *State v. Elswick*, 11th Dist. No. 2006-L-075, 2006-Ohio-7011. In *State v. Elswick*, this court found the verbatim assignments of error to be without merit. *Id.* at ¶5-55.

{¶14} Based on the authority of *State v. Elswick*, Filchock's assignments of error are without merit.

{¶15} The judgment entry of the Lake County Court of Common Pleas is affirmed.

COLLEEN MARY O'TOOLE, J.,

MARY JANE TRAPP, J.,

concur.