

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2005-02-043
	:	
-vs-	:	<u>OPINION</u>
	:	6/19/2006
	:	
WILLIAM M. ESTERKAMP,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS  
Case No. CR04-08-1252

Robin N. Piper, Butler County Prosecuting Attorney, Daniel G. Eichel, Government Services Center, 315 High Street, 11th Floor, Hamilton, OH 45012-0515, for plaintiff-appellee

Christopher P. Frederick, 304 N. Second Street, Hamilton, OH 45011, for defendant-appellant

**YOUNG, J.**

{¶1} Defendant-appellant, William M. Esterkamp, appeals the 7-year prison term he received for second-degree felony convictions for unlawful sexual conduct with a minor.

{¶2} Appellant pled guilty to three counts of violating R.C. 2907.04(A) and was found to be a sexual predator. The trial court sentenced appellant to seven years on each

offense, and ordered the sentences to be served consecutive to one another and to a separate sentence appellant was serving for a parole violation.

{¶3} On appeal, appellant presents a single assignment of error which claims that his sentence is unlawful under *Apprendi v. New Jersey* (2000), 530 U.S. 466, 120 S.Ct. 2348; and *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856.

{¶4} Appellant's assignment of error essentially claims the trial court erred by imposing more than the minimum sentence for second-degree felony offenses and ordering those sentences to be served consecutively. Appellant maintains that the imposition of nonminimum consecutive sentences based upon facts neither found by a jury nor admitted by appellant infringes upon his constitutional right to a jury trial as defined by the United States Supreme Court in *Apprendi*. See, also, *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531.

{¶5} The Ohio Supreme Court recently found portions of Ohio's statutory sentencing scheme unconstitutional and severed those portions from Ohio's sentencing code. See, *Foster*. Among these unconstitutional sections were R.C. 2929.14(B), which requires certain judicial findings before the imposition of more than a minimum sentence, and R.C. 2929.14(E), which also requires certain judicial findings before consecutive sentences may be imposed. See *Foster* at paragraphs one and three of the syllabus. As a result of the severance of these provisions from Ohio's felony sentencing scheme, judicial fact-finding prior to the imposition of a sentence within the basic range of R.C. 2929.14(A) is no longer required. *Id.* at paragraphs two and four of the syllabus. See, also, *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, paragraph three of the syllabus.

{¶6} In this case, the trial court made certain findings under R.C. 2929.14(B) and (E) to impose more than the minimum prison term and to impose consecutive sentences.

{¶7} The *Foster* court instructed that all cases pending on direct review in which the unconstitutional sentencing provisions were utilized must be remanded for sentencing. See, *Foster* at ¶104. Accordingly, appellant's sole assignment of error is sustained.

{¶8} The judgment of the trial court is reversed as to sentencing and the case is remanded for resentencing as to Counts One, Two and Three.

POWELL, P.J., and WALSH, J., concur.

[Cite as *State v. Esterkamp*, 2006-Ohio-3085.]