

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2005-06-171
	:	
-VS-	:	<u>OPINION</u>
	:	6/19/2006
	:	
FERMIN GONZALEZ-ORTIZ,	:	
Defendant-Appellant.	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2005-04-0554

Robin N. Piper, Butler County Prosecuting Attorney, Daniel G. Eichel, Government Services Center, 315 High Street, 11th Floor, Hamilton, OH 45011-6057, for plaintiff-appellee

Brian K. Harrison, 240 East State Street, Trenton, OH 45067, for defendant-appellant

POWELL, P.J.

{¶1} Defendant-appellant, Fermin Gonzalez-Ortiz, appeals his convictions for four felony offenses.

{¶2} Appellant pled guilty to two third-degree felony offenses of tampering with records, one fourth-degree felony offense of identity fraud, and one fifth-degree felony

offense of forgery. The trial court sentenced appellant to three-year and two-year terms on the tampering with records charges, a one-year term for the identity fraud charge and a six-month term on the forgery charge, all of which were to be served concurrently.

{¶3} On appeal, appellant presents a single assignment of error which reads as follows:

{¶4} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT SENTENCED HIM TO A TERM OF IMPRISONMENT IN EXCESS OF THE MINIMUM SENTENCE."

{¶5} Appellant's assignment of error claims the trial court erred by imposing more than the one-year minimum sentence for a third-degree felony. Appellant maintains that the imposition of a nonminimum sentence based upon facts neither found by a jury nor admitted by appellant infringes upon appellant's constitutional right to a trial by jury as defined by the United States Supreme Court in *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct.2531.

{¶6} The Ohio Supreme Court recently found portions of Ohio's statutory sentencing scheme unconstitutional and severed those portions from Ohio's sentencing code. See *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. Among these unconstitutional sections was R.C. 2929.14(B), which requires certain judicial findings before the imposition of more than a minimum sentence. See *Foster* at paragraph one of the syllabus. As a result of the severance of this provision from Ohio's felony sentence 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 paragraph two of the syllabus. See, also, *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, paragraph three of the syllabus.

{¶7} In this case, the trial court made certain findings under R.C. 2929.14(B) to

impose more than the minimum prison term.

{¶8} 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 assignment of error is sustained.

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

WALSH and BRESSLER, JJ., concur.

[Cite as *State v. Gonzalez-Ortiz*, 2006-Ohio-3087.]