

[Cite as *State v. Boling*, 2006-Ohio-2632.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. Case No. 21272
v.	:	T.C. Case No. 05-CR-1660
DWAYNE SCOTT BOLING	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

.....

O P I N I O N

Rendered on the 19th day of May, 2006.

.....

MATHIAS H. HECK, JR., Prosecuting Attorney, By: JENNIFER B. FREDERICK,  
Assistant Prosecuting Attorney, Atty. Reg. #0076440, Appellate Division, P.O. Box  
972, 301 W. Third Street, Suite 500, Dayton, Ohio 45422  
Attorneys for Plaintiff-Appellee

ROBERT J. HUFFMAN, JR., Atty. Reg. #0040316, 80 S. Plum Street, Troy, Ohio  
45373  
Attorney for Defendant-Appellant

.....

VALEN, J. (By Assignment)

{¶1} Defendant-appellant Dwayne Scott Bowling appeals from his conviction and sentence, following a guilty plea, upon six counts of Gross Sexual Imposition (victim being under thirteen), felonies of the third degree, and upon six counts of Illegal Use of a Minor in Nudity-Oriented Material, felonies of the fifth degree. Bowling was sentenced to four years on each count of Gross Sexual Imposition, to run concurrently

with one another, and to ten months on each count of Illegal Use of a Minor in Nudity-Oriented Material, to run concurrently with one another, with the concurrent four-year sentences to be served consecutively with the concurrent ten-month sentences, for a total sentence of four years and ten months.

{¶2} Bowling's assignments of error are as follows:

{¶3} "THE TRIAL COURT ERRED BY IMPOSING CONSECUTIVE SENTENCES CONTRARY TO R.C. 2929.14(E)(4) AND R.C. 2929.19(B)(2)(c).

{¶4} "THE TRIAL COURT ERRED BY IMPOSING CONSECUTIVE SENTENCES PURSUANT TO R.C. 2929.14(E)(4) AND R.C. 2929.19(B)(2)(c) WHEN SUCH SENTENCES WERE NOT SUPPORTED BY THE RECORD."

{¶5} The statutory provisions upon which the trial court relied in imposing sentence were held to be unconstitutional in *State v. Foster*, 2006-Ohio-856. The appropriate remedy was declared in that case to be the reversal of the sentence and a remand for re-sentencing. *Id.* Accordingly, the sentence of the trial court is Reversed, and this cause is remanded for re-sentencing in accordance with *State v. Foster*, *supra*.

.....

WOLFF and FAIN, JJ., concur.  
(Hon. Anthony Valen, retired from the Twelfth Appellate District, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

Jennifer B. Frederick  
Robert J. Huffman, Jr.  
Hon. Barbara P. Gorman