

[Cite as *State v. Starks*, 2006-Ohio-5959.]

IN THE COURT OF APPEALS FOR MIAMI COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2005 CA 42
v.	:	T.C. NO. 05 CR 345
	:	
TYRONE STARKS	:	(Criminal Appeal from Common Pleas Court)
	:	
Defendant-Appellant	:	

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OPINION

Rendered on the 9th day of November, 2006.

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WOLFF, J.

{¶ 1} Tyrone Starks pleaded guilty to an information charging aggravated assault, a fourth degree felony. The sentencing range for the offense was 6-18 months. The court imposed a 17-month sentence, finding the minimum term would not adequately protect the public and would demean the seriousness of the offense. See R.C. 2929.14(B)(2).

{¶ 2} Starks advances two assignments of error.

{¶ 3} “1. THE TRIAL COURT ERRED BY FAILING TO CONSIDER ALL PERTINENT SENTENCING FACTORS AND BY FAILING TO IMPOSE THE MINIMUM SENTENCE.

{¶ 4} “2. THE TRIAL COURT ERRED BY IMPOSING NON-MINIMUM SENTENCES CONTRARY TO THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND THE AUTHORITY CONTAINED IN BLAKELY V. WASHINGTON AND UNITED STATES V. BOOKER.”

{¶ 5} Sentencing in this case predated the Ohio Supreme Court’s decision in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. In *Foster*, R.C. 2929.14 was declared unconstitutional, and that holding was applied to all cases on direct review. *Id.* 31. As such, the sentence in this case must be reversed and the case must be remanded for resentencing.

{¶ 6} The second assignment of error is sustained and the first assignment is overruled as moot.

{¶ 7} The sentence will be reversed and the matter will be remanded for resentencing. In all other respects, the judgment will be affirmed.

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BROGAN, J. and WALTERS, J., concur.

(Hon. Sumner E. Walters retired from the Third District Court of Appeals sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

- James D. Bennett
- Steven R. Layman
- Hon. Jeffrey M. Welbaum

