

[Cite as *State v. Eicholtz*, 2007-Ohio-1032.]

IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
CLARK COUNTY

STATE OF OHIO

*Plaintiff-Appellee*

v.

JONATHAN B. EICHOLTZ

*Defendant-Appellant*

Appellate Case No. 06-CA-27

Trial Court Case No. 05-CR-0952

(Criminal Appeal from  
Common Pleas Court)

.....

OPINION

Rendered on the 9<sup>th</sup> day of March, 2007.

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FAIN, J.

{¶ 1} Defendant-appellant Jonathan B. Eicholtz pled guilty to one count of Disrupting Public Services, and one count of Domestic Violence. Remaining charges were dismissed. The trial court sentenced Eicholtz to maximum sentences of 18 months on each of the offenses of which he was convicted, and ordered the sentences to be served consecutively. From his sentence, Eicholtz appeals.

I

{¶ 2} Eicholtz's First and Second assignments of error are as follows:

{¶ 3} "THE TRIAL COURT ERRED IN SENTENCING EICHOLTZ TO THE MAXIMUM SENTENCE.

{¶ 4} "THE TRIAL COURT ERRED IN SENTENCING EICHOLTZ TO CONSECUTIVE SENTENCES."

{¶ 5} At the time of his sentencing, requirements were set forth in R.C. 2929.19(B)(2)(e) for the imposition of maximum sentences, and in R.C. 2929.14(E) for the imposition of consecutive sentences. Eicholtz contends that the trial court did not comply with these requirements. The State acknowledges that because these statutory requirements for maximum and consecutive sentences have been severed from Ohio's sentencing statute by *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, Eicholtz's sentence must be reversed, and this cause must be remanded for re-sentencing, in accordance with *State v. Foster*. To that limited extent, Eicholtz's First and Second assignments of error are sustained.

II

{¶ 6} Eicholtz’s Third Assignment of Error is as follows:

{¶ 7} “APPLYING THE REMEDY FROM *STATE V. FOSTER* TO EICHOLTZ DEPRIVES EICHOLTZ OF HIS DUE PROCESS RIGHTS.”

{¶ 8} Eicholtz seeks to rely upon R.C. 2929.19(B)(2)(e), and R.C. 2929.14(E) for the proposition that his sentences must be reversed, and this cause must be remanded for re-sentencing, in accordance with those provisions. But those provisions have been held to be unconstitutional, and have been ordered severed from the statute. *State v. Foster*, supra, ¶97.

{¶ 9} Eicholtz contends that the application of the holding in *State v. Foster*, supra, to him violates the Due Process clause of Section 1 of the Fourteenth Amendment to the United States Constitution, as well as the ex post facto clause of Article I, Section 10 of the United States Constitution. These are interesting arguments. But as Eicholtz notes, *State v. Foster*, supra, specifically mandates that “those [cases] pending on direct review must be remanded to trial courts for new sentencing hearings not inconsistent with this opinion.” *Id.*, ¶104. As a court inferior to the Ohio Supreme Court, we are not permitted to ignore its mandate, regardless of our opinion whether that mandate complies with the United States Constitution.

{¶ 10} Eicholtz’s Third Assignment of Error is overruled.

### III

{¶ 11} Eicholtz’s First and Second assignments of error having been sustained, to the extent noted, and his Third Assignment of Error having been overruled, the sentence imposed by the trial court is Reversed, and this cause is Remanded for re-

sentencing in accordance with *State v. Foster*, supra.

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BROGAN and GRADY, JJ., concur.

Copies mailed to:

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Hon. Douglas M. Rastatter