

[Cite as *State v. Young*, 2007-Ohio-1330.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

STATE OF OHIO

*Plaintiff-Appellee*

v.

ANTOINE R. YOUNG

*Defendant-Appellant*

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Appellate Case No. 21327

Trial Court Case No. 04-CR-2401

(Criminal Appeal from  
Common Pleas Court)

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OPINION

Rendered on the 23<sup>rd</sup> day of March, 2007.

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FAIN, J.

{¶ 1} Defendant-appellant Antoine R. Young appeals from his sentence for one count of Carrying a Concealed Weapon and one count of Having Weapons Under Disability. Following a jury trial, Young was convicted on both counts and was sentenced to one year for Carrying a Concealed Weapon, and three years for Having Weapons Under Disability, to be served consecutively, for a total sentence of four years.

{¶ 2} Young's sole assignment of error is as follows:

{¶ 3} "THE TRIAL COURT RELIED UPON CRITERIA SET FORTH IN A SENTENCING STATUTE WHICH SAID STATUTE HAS BEEN FOUND UNCONSTITUTIONAL."

{¶ 4} Young relies upon *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, in support of his assignment of error. That opinion does, indeed, hold that the sentencing statute upon which the trial court relied in imposing consecutive sentences – R.C. 2929.14(E)(4) – is unconstitutional and must be severed from the statute.

{¶ 5} The remedy prescribed by *State v. Foster*, supra, at ¶104, is the reversal of the sentence imposed, and the remanding of the cause to the trial court for re-sentencing in accordance with *Foster*. The State argues that Young waived this remedy when he failed to raise, in the trial court, the constitutional right to a jury trial acknowledged in *Blakely v. Washington* (2004), 542 U.S. 220, 125 S.Ct. 2531, 159

L.Ed.2d 403. This waiver issue was specifically addressed and rejected in *State v. Foster*, supra, at ¶¶30 - 33.

{¶ 6} Young's sole assignment of error is sustained. 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 DONOVAN, JJ., concur.

Copies mailed to:

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Hon. Gregory F. Singer