

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 21966
v.	:	T.C. NO. 03 CR 2650
PAUL BURGESS	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

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OPINION

Rendered on the 24th day of August, 2007.

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PAUL BURGESS, #A476-023, Southern Ohio Correctional Institute, P. O. Box 45699, Lucasville, Ohio 45699
Defendant-Appellant

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DONOVAN, J.

{¶ 1} Defendant-appellant Paul Burgess appeals from his conviction of four counts of Rape of a child under the age of thirteen by force or threat of force pursuant to Ohio Revised

Code §2907.02. Burgess was sentenced to fifteen years to life on each of the four counts. The trial court ordered the sentences on the first two counts to run concurrently, and the sentences on the third and four counts to run concurrently, but consecutive to one another, for a total term of imprisonment of thirty years to life. Burgess was designated a sexually oriented offender. Burgess appealed his convictions, and this court reversed and remanded the matter for re-sentencing on July 22, 2005, because the trial court had failed to comply with R.C. 2929.14(E)(4) and 2929.19(B)(2)(c). On remand, the trial court re-imposed the sentences that were originally given. Burgess again filed an appeal, relying on *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. On October 6, 2006, this court reversed and remanded the matter for re-sentencing because Burgess had been sentenced under a section of the Ohio Revised Code that was deemed unconstitutional. On November 22, 2006, the trial court re-imposed the original sentences a second time. It is the latter re-sentencing which has been appealed by Burgess and is currently before this court.

{¶ 2} Appellate counsel has filed a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S. Ct. 1396, 19 L.Ed.2d. 493, indicating that there are no meritorious issues to be presented on appeal. By entry filed May 29, 2007, we advised Burgess that his appellate counsel had filed an *Anders* brief and allowed him sixty days within which to file his own pro se brief. Burgess has not filed his own pro se brief.

{¶ 3} Pursuant to *Anders*, supra, we have independently reviewed the record. We agree with Burgess' appellate counsel that there are no meritorious issues presented on appeal. We have reviewed the record, the sentences imposed are within the statutory sentencing guidelines, and at the November 22, 2006 re-sentencing, the trial court did not employ any factors which

were deemed unconstitutional by *Foster*.

{¶ 4} We agree with Burgess' appellate counsel that no meritorious issues are present in this appeal.

Judgment affirmed.

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FAIN, J. and GRADY, J., concur.

Copies mailed to:

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Mark A. Fisher
Paul Burgess
Hon. Barbara P. Gorman