

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2006 CA 21
v.	:	T.C. NO. 05 CR 1018
NAAMON JANUARY	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

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**OPINION**

Rendered on the 2<sup>nd</sup> day of February, 2007.

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Attorney for Plaintiff-Appellee

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Attorney for Defendant-Appellant

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DONOVAN, J.

{¶ 1} This matter is before the Court on the Notice of Appeal of Naamon January, filed March 1, 2006. On January 11, 2006, January pled guilty to one count of rape, in violation of R.C. 2907.02(A)(2), a felony of the first degree. The trial court imposed a maximum sentence of ten years and found January to be a habitual sexual offender on February 1, 2006. January asserts the

following sole assignment of error:

{¶ 2} “THE SENTENCE IMPOSED UPON APPELLANT WAS UNLAWFUL IN THAT IT WAS BASED ON FINDINGS UNDER A STATUTE LATER FOUND UNCONSTITUTIONAL IN STATE V. FOSTER.”

{¶ 3} January relies on *State v. Foster*, 109 Ohio St.3d 1, 845 N.E.2d 470, 2006-Ohio-856. “*Foster* established a bright-line rule that any pre-*Foster* sentence to which the statutorily required findings of fact applied (i.e. more-than-minimum, maximum, and consecutive sentences), pending on direct review at the time that *Foster* was decided, must be reversed, and the cause remanded for re-sentencing in accordance with *Foster*, if the sentence is a subject of the appeal.” *State v. Logsdon*, Clark App. No. 2005-CA-66, 2006-Ohio-6833.

{¶ 4} We agree that *Foster* applies here and that January was sentenced in violation of the rule articulated therein. Accordingly, we sustain Johnson’s assignment of error, reverse the trial court’s judgment and remand the cause for resentencing consistent with *Foster*.

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WOLFF, P.J. and FAIN, J., concur.

Copies mailed to:

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Hon. Douglas M. Rastatter