

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2007 CA 38
v.	:	T.C. NO. 2003 CR 704
MICHAEL DALTON	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

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OPINION

Rendered on the 14th day of December, 2007.

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Attorney for Plaintiff-Appellee

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MICHAEL DALTON, #A458-944, Pickaway Correctional Institute, P. O. Box 209, Orient, Ohio 43146
Defendant-Appellant

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WOLFF, P.J.

{¶ 1} On April 5, 2007, the trial court resentenced Michael Dalton to consecutive sentences of one year, one year, and five years on various drug offenses of which he had been

found guilty by a jury.

{¶ 2} Counsel was appointed to prosecute an appeal and, on July 23, 2007, appointed appellate counsel filed an *Anders* brief pursuant to *Anders v. California* (1967), 386 U.S. 738, wherein appointed appellate counsel represented that she was unable to identify any meritorious arguments to advance on appeal.

{¶ 3} By order of July 31, 2007, we informed Dalton that his counsel had filed an *Anders* brief and the significance of an *Anders* brief. We invited Dalton to file pro se assignments of error within sixty day of July 31, 2007. To date, nothing has been filed with this court.

{¶ 4} Our remand for resentencing was pursuant to *State v. Foster*, 109 OhioSt.3d, 1, 2006-Ohio-856, 845 N.E.2d 470. The trial court imposed the identical sentence which it had previously imposed prior to the announcement of *Foster*.

{¶ 5} Appointed appellate counsel has advanced a single assignment of error as follows:

{¶ 6} “Applying the remedy from *State v. Foster* to Dalton deprives Dalton of his due process rights.”

{¶ 7} Appointed appellate counsel acknowledges that we expressly rejected the due process argument as not cognizable in an Ohio intermediate court of appeals in Dalton’s most recent appeal prior to this one. *State v. Dalton*, Greene App. No. 2006CA17, 2007-Ohio-180.

{¶ 8} We continue to hold in accordance with that opinion and find no error in the court’s resentencing.

{¶ 9} Furthermore, we have satisfied ourselves from a review of the record pursuant to

our responsibilities under *Anders* that there are no arguably meritorious issues for appeal, and that this appeal is entirely frivolous. Accordingly, the judgment of resentencing will be affirmed.

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FAIN, J. and DONOVAN, J., concur.

Copies mailed to:

Elizabeth A. Ellis
Brandin D. Marlow
Michael Dalton
Hon. J. Timothy Campbell