

[Cite as *State v. Thomas*, 2007-Ohio-6907.]

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

STATE OF OHIO	:	
	:	Appellate Case No. 06-CA-126
Plaintiff-Appellee	:	
	:	Trial Court Case No. 04-CR-0405
v.	:	
	:	(Criminal Appeal from
SHEA THOMAS	:	Common Pleas Court)
	:	
Defendant-Appellant	:	

.....

O P I N I O N

Rendered on the 21st day of December, 2007.

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AMY SMITH, Atty. Reg. #0081712, Clark County Prosecutor's Office, 50 East Columbia Street, 4th Floor, P.O. Box 1608, Springfield, Ohio 45501
Attorney for Plaintiff-Appellee

SHEA THOMAS, #478-383, Lebanon Correctional Institution, P.O. Box 56, Lebanon, Ohio 45036-0056
Defendant-Appellant, *pro se*

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PER CURIAM:

{¶ 1} On September 15, 2004, Shea Thomas was convicted of felonious assault with a firearm specification. He was sentenced in the Clark County Common Pleas

Court to seven (7) years on the felonious assault charge and three (3) years on the gun specification, with the sentences required to be served consecutively. Thomas' conviction was affirmed by this court on July 29, 2005.

{¶ 2} On July 3, 2006, Thomas filed a motion in the trial court styled, "Motion to Correct an Unlawful Sentence." Thomas contended in his motion that the trial court violated his right to jury to make the fact finding necessary to impose the maximum seven-year sentence he received. Thomas cited *State v. Foster* (2006), 109 Ohio St.3d 6 in support of his motion.

{¶ 3} The State argues that *Foster* applies only to those cases which were on direct review at the time *Foster* was decided; namely, February 27, 2006. We agree. Thomas' motion is at best a collateral attack on the September 15, 2004 judgment, and *Foster* has no application to collateral attacks on sentences previously imposed. See *State v. Smith* (August 25, 2006) Montgomery CA 21004.

{¶ 4} The assignment of error is overruled. The judgment of the trial court is Affirmed.

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WOLFF, P.J., BROGAN, J., and DONOVAN, J., concur.

Copies mailed to:

Amy Smith
Shea Thomas
Hon. Douglas M. Rastatter