

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 22256
v.	:	T.C. NO. 2001 CR 3016
	:	
RONALD W. BROCAR	:	(Criminal Appeal from Common Pleas Court)
	:	
Defendant-Appellant	:	

OPINION

Rendered on the 24th day of October, 2008.

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Attorney for Defendant-Appellant

RONALD W. BROCAR, #A418-877, Ohio State Penitentiary, 878 Coitsville-Hubbard Road, Youngstown, Ohio 44505
Defendant-Appellant

WOLFF, P.J.

{¶ 1} This is Ronald Brocar’s appeal from resentencing upon remand from this court.

The trial court resentenced Brocar to the same sentences it imposed originally.

{¶ 2} Counsel was appointed to prosecute this appeal, and on June 24, 2008, counsel filed an *Anders* brief pursuant to *Anders v. California* (1967), 386 U.S. 738. Counsel proposed three possible assignments of error, but concluded they lacked merit: error in overruling Brocar's motion for polygraph examination; sentence was imposed in violation of the Ex Post Facto Clause of the Constitution of the United States; sentence was contrary to law.

{¶ 3} By order of July 2, 2008, we advised Brocar that his counsel had filed an *Anders* brief, and of the significance of an *Anders* brief. We invited Brocar to file his own brief, which he has done.

{¶ 4} On his own behalf, Brocar has filed a pro se brief asserting that sentence imposed upon remand, which remand was pursuant to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, violated the Ex Post Facto and Due Process clauses of the Constitution of the United States.

{¶ 5} The sentence imposed upon remand was in accord with *Foster*, and we have said on several occasions that we are without jurisdiction to declare decisions of the Supreme Court of Ohio, such as *Foster*, violative of the Ex Post Facto and Due Process clauses of the federal constitution. See, e.g., *State v. Burkhart*, Champaign App. No. 06 CA 18, 2007-Ohio-3436, 2007 WL 1934357.

{¶ 6} We also agree with appointed appellate counsel that his proposed assignments of error lack arguable merit. We have independently reviewed the proceedings upon remand and conclude, as did appellate counsel, that there are no arguably meritorious issues, and that this appeal is frivolous.

{¶ 7} The judgment will be affirmed.

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BROGAN, J. and DONOVAN, J., concur.

Copies mailed to:

R. Lynn Nothstine
Anthony S. Vannoy
Ronald W. Brocar
Hon. Dennis J. Langer