

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

STATE OF OHIO	:	
	:	Appellate Case No. 22947
Plaintiff-Appellee	:	
	:	Trial Court Case No. 99-CR-3504
v.	:	
	:	
KEVIN V. REINERT	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 7th day of August, 2009.

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MATHIAS H. HECK, JR., by MELISSA M. FORD, Atty. Reg. #0084215, Montgomery County Prosecutor’s Office, Appellate Division, Montgomery County Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45422
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Attorney for Defendant-Appellant

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BROGAN, J.

{¶ 1} Kevin Reinert appeals from the trial court’s termination entry resentencing him to an aggregate term of fifteen years in prison for six felony convictions.

{¶ 2} The trial court initially sentenced Reinert in May 2000. It then

resentenced him pursuant to R.C. 2929.191,¹ and it filed a new termination entry on August 22, 2008. The new entry imposed the same aggregate fifteen-year sentence Reinert originally received but added a period of post-release supervision. This timely appeal followed.

{¶ 3} In his sole assignment of error, Reinert contends the trial court erred in imposing non-minimum and consecutive prison terms when it resentenced him. His specific argument is that the severance remedy adopted by the Ohio Supreme Court in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, which now permits trial courts to impose more-than-minimum and consecutive sentences without making certain findings, violates the ex post facto and due process provisions of the U.S. Constitution when applied to him. Therefore, Reinert claims the trial court was required to impose minimum, concurrent prison terms.

{¶ 4} We have rejected Reinert's argument many times before. See, e.g., *State v. North*, Clark App. No. 07CA0059, 2008-Ohio-6239, ¶8-9; *State v. Nunez*, Montgomery App. No. 22208, 2008-Ohio-3376, ¶11; *State v. Bell*, 176 Ohio App.3d 378, 396-397, 2008-Ohio-2578. On July 28, 2009, the Ohio Supreme Court rejected the same argument in *State v. Elmore*, Slip Opinion No. 2009-Ohio-3478, finding that application of *Foster's* severance remedy to defendants who are resentenced after *Foster* does not violate their Sixth Amendment right to a jury trial or the Ex Post Facto or Due Process Clauses of the U.S. Constitution. Accordingly, Reinert's assignment of error is overruled.

¹R.C. 2929.191 provides for correction of a judgment of conviction to include notice that an offender will be subject to a period of post-release supervision.

{¶ 5} The judgment of the Montgomery County Common Pleas Court is affirmed.

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DONOVAN, P.J., and GRADY, J., concur.

Copies mailed to:

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Melissa M. Ford
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Hon. Dennis J. Langer