

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
AUGLAIZE COUNTY**

STATE OF OHIO

CASE NUMBER 2-05-50

PLAINTIFF-APPELLEE

v.

OPINION

CHRISTIE L. KERNER

DEFENDANT-APPELLANT

CHARACTER OF PROCEEDINGS: Criminal Appeal from Common Pleas Court.

JUDGMENT: Sentence vacated and cause remanded.

DATE OF JUDGMENT ENTRY: June 19, 2006

ATTORNEYS:

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For Appellant.**

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For Appellee.**

CUPP, J.

{¶1} Defendant-appellant, Christie Kerner (hereinafter “Kerner”), appeals the sentence imposed by the Auglaize County Court of Common Pleas. In light of the Ohio Supreme Court’s opinion in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, we vacate the sentence and remand for resentencing.

{¶2} Kerner was indicted for two counts of forgery, violations of R.C. 2913.31(A)(3), and felonies of the fifth degree. Kerner pled guilty to one count of forgery and the second count of forgery was dismissed. On November 22, 2005, the trial court sentenced her to twelve months imprisonment with the sentence to run consecutively to sentences in Putnam and Allen County.

{¶3} It is from this sentence that Kerner appeals and sets forth two assignments of error for our review. For clarity of analysis, we have combined Kerner’s assignments of error.

ASSIGNMENT OF ERROR NO. I

THE TRIAL COURT COMMITTED PREJUDICIAL ERROR WHEN IT FAILED TO PROPERLY FOLLOW THE SENTENCING CRITERIA SET FORTH IN OHIO REVISED CODE, SECTION 2929.14 RESULTING IN THE DEFENDANT-APPELLANT RECEIVING A SENTENCE WHICH IS CONTRARY TO LAW.

ASSIGNMENT OF ERROR NO. II

THE TRIAL COURT’S ORDERING THAT THE SENTENCES OF DEFENDANT-APPELLANT ARE TO BE SERVED

CONSECUTIVELY TO EACH OTHER WAS UNSUPPORTED BY THE RECORD AND WAS CONTRARY TO LAW.

{¶4} In her first assignment of error, Kerner argues that her maximum sentence is not supported by the record. Kerner, in her second assignment of error, argues that the trial court's imposition of consecutive sentences is not supported by the record and is contrary to law.

{¶5} In *Foster*, the Ohio Supreme Court held portions of Ohio's sentencing framework unconstitutional. 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. Specifically, the Ohio Supreme Court held R.C. 2929.14(C) and 2929.14(E)(4) unconstitutional. *Id.* at paragraphs one and three of the syllabus. Since Kerner was sentenced to maximum and consecutive sentences under statutes found unconstitutional by the Ohio Supreme Court, we must vacate the sentence and remand this case to the trial court for further proceedings consistent with *Foster*. See *Id.* at ¶¶ 103-104.

Sentence Vacated and Cause Remanded.

BRYANT, P.J., and ROGERS, J., concur.
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