

[Cite as *State v. Titus*, 2006-Ohio-3129.]

[Please see nunc pro tunc opinion at 2007-Ohio-1092.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

TERESA M. TITUS

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Julie A. Edwards, J.

Hon. John F. Boggins, J.

Case No. 05CAA07042

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Delaware County Court of
Common Pleas, Case No. 04CRI07315

JUDGMENT:

Vacated and Remanded

DATE OF JUDGMENT ENTRY:

June 20, 2006

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, P.J.

{¶1} Defendant-appellant Teresa M. Titus appeals her sentence entered by the Delaware County Court of Common Pleas, following her conviction on numerous counts of forgery, identity fraud, and theft under two separate case numbers, 04-CR-I-07-315 and 04-CR-I-11-482.

STATEMENT OF THE CASE¹

{¶2} Following appellant's entering guilty pleas to the aforementioned charges, the trial court conducted a sentence hearing on June 10, 2005. The trial court sentenced appellant to a total term of actual imprisonment of five years and eleven months. The trial court ordered some of the sentences to run consecutively, and other sentences to run concurrently.

{¶3} Appellant appeals the June 15, 2005 Judgment Entry on Sentence, assigning as error:

{¶4} "I. THE TRIAL COURT ERRED BY IMPOSING CONSECUTIVE SENTENCES, SAID SENTENCES BEING CONTRARY TO LAW

{¶5} "II. APPELLANT WAS IMPROPERLY SENTENCED TO CONSECUTIVE SENTENCES THAT EXCEED THE MAXIMUM PRISON TERM ALLOWED FOR THE MOST SERIOUS OFFENSE OF WHICH THE APPELLANT WAS CONVICTED."

I & II

{¶6} We shall address appellant's assignments of error together.

¹ A rendition of the facts is unnecessary for our resolution of appellant's assignments of error.

{¶17} In its Sentencing Entry, the trial court found, pursuant to O.R.C. 2929.14 (B), the shortest prison term would demean the seriousness of appellant's conduct and the shortest prison term would not adequately protect the public from future crime. Based upon such finding, the trial court sentenced appellant to more than the minimum term. The trial court also made the requisite findings under R.C. 2929.14 (E)(4) in ordering some of the sentences to run consecutively.

{¶18} Subsequent to the filing of briefs by the parties, the Ohio Supreme Court announced its decision in *State v. Foster*, ___Ohio St.3d ___, 2006-Ohio-856. Therein, the Ohio Supreme Court found R.C. 2929.14 (B) and R.C. 2929.14 (E)(4) unconstitutional. *Id.*, syllabus nos. 1 and 3, respectively. The *Foster* Court determined sentences based upon unconstitutional statutes are void and the appropriate disposition is to vacate the sentence and remand the matter to the trial court for a new sentencing hearing. *Id.* at para. 103. Based upon *Foster*, we sustain appellant's assignments of error.

{19} Appellant's sentence is ordered vacated and the case remanded to the trial court for resentencing.

By: Hoffman, P.J.

Edwards, J. and

Boggins, J. concur

HON. WILLIAM B. HOFFMAN

HON. JULIE A. EDWARDS

HON. JOHN F. BOGGINS

