

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. Julie A. Edwards, J.
-vs-	:	
	:	Case No. 05-COA-052
TONY F. ISAAC	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING:	Appeal from the Court of Common Pleas, Case No. 03-CRI-012
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JUDGMENT:	Reversed and Remanded
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DATE OF JUDGMENT ENTRY:	August 3, 2006
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APPEARANCES:

For Plaintiff-Appellee

PAUL T. LANGE
307 Orange Street
Ashland, OH 44805

For Defendant-Appellant

DOUGLAS A. MILHOAN
601 South Main Street
North Canton, OH 44720

Farmer, J.

{¶1} By judgment entry filed October 17, 2005, appellant, Tony Isaac, was sentenced to an aggregate term of twenty-eight years in prison after pleading guilty to five counts of rape in violation of R.C. 2907.02 and one count of gross sexual imposition in violation of R.C. 2907.05.

{¶2} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

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{¶3} "THE IMPOSITION OF A PRISON SENTENCE IN THIS CASE WAS UNCONSTITUTIONAL AS IT WAS BASED ON AN UNCONSTITUTIONAL STATUTE."

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{¶4} Appellant claims the trial court erred in sentencing him. We agree.

{¶5} Specifically, appellant claims the trial court sentenced him under unconstitutional statutes based upon the Supreme Court of Ohio's opinion in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, wherein the *Foster* court held R.C. 2929.14(B) and (C), R.C. 2929.19(B)(2), R.C. 2929.14(E)(4) and R.C. 2929.41(A), requiring "judicial factfinding before imposition of a sentence greater than the maximum term authorized by a jury verdict or admission of the defendant" and/or consecutive sentences, are unconstitutional. *Id.* at ¶83. The *Foster* court severed the statutes, and concluded "****trial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences." *Id.* at ¶100.

{¶6} In addition, the state concedes this issue in its brief at 2.

{¶7} In accordance with the directives of the *Foster* court, we grant the assignment of error and vacate the sentences herein. The matter is remanded to the trial court for resentencing pursuant to *Foster*.

{¶8} The sole assignment of error is granted.

{¶9} The judgment of the Court of Common Pleas of Ashland County, Ohio is hereby reversed and remanded.

By Farmer, J.

Gwin, P.J. and

Edwards, J. concur.

JUDGES

SGF/db 0711

STATE OF OHIO

-VS-

Defendant-Appellant

JUDGMENT ENTRY

CASE NO. 05-COA-052

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Ashland County, Ohio is reversed and the matter is remanded to said court for further proceedings consistent with this opinion.

JUDGES