

[Cite as *State v. Bell*, 2006-Ohio-1319.]

COURT OF APPEALS  
LICKING COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JAMES H. BELL

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. John F. Boggins, J.

Case No. 05-CA-70

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Licking County Court of  
Common Pleas, Criminal Case No's.  
04-CR-637 & 05-CR-150

JUDGMENT:

Vacated and Remanded

DATE OF JUDGMENT ENTRY:

March 21, 2006

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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*Hoffman, P.J.*

{¶1} Defendant-appellant James H. Bell appeals his sentences entered by the Licking County Court of Common Pleas on one count of failure to register, in violation of R.C. 2950.05 (A); and one count of grand theft, in violation of R.C. 2913.02 (A)(1), after the trial court accepted appellant's pleas of no contest and found him guilty as charged. Plaintiff-appellee is the State of Ohio.

#### STATEMENT OF THE CASE<sup>1</sup>

{¶2} The Licking County Grand Jury indicted appellant on one count of failure to register as a sex offender in Licking County Common Pleas Case No. 2004CR00637. While out on bond and prior to the resolution of Case No. 2004CR00637, appellant was arrested on March 19, 2005, for stealing an automobile. The Licking County Grand Jury indicted appellant on one count of grand theft in Licking County Common Pleas Case No. 2005CR00150.

{¶3} Appellant entered pleas of no contest in both cases. On May 17, 2005, the trial court found appellant guilty in Case No. 2004CR00637, failure to register, and deferred sentencing until June 15, 2005. On June 15, 2005, the trial court found appellant guilty of grand theft in Case No. 2005CR00150. The trial court sentenced appellant to four years on the failure to register offense, and one year on the grand theft offense. The trial court ordered the sentences to run consecutively. The trial court memorialized the sentences in separate judgment entries, both filed June 15, 2005.

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<sup>1</sup> A Statement of the Facts is not necessary to our disposition of appellant's assignment of error.

{¶4} It is from these sentences appellant appeals, raising as his sole assignment of error:

{¶5} “I. THE TRIAL COURT FAILED TO COMPLY WITH THE REQUIREMENTS OF REV. CODE §2929.14 (E) AND STATE V. COMER IN IMPOSING CONSECUTIVE SENTENCES.”

I

{¶6} Herein, appellant challenges the trial court’s imposition of consecutive sentences, arguing the court failed to make the necessary findings and state its reasons in support of those findings pursuant to *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165. Specifically, appellant asserts the trial court failed to find consecutive sentences were not disproportionate to the seriousness of his conduct and to the danger he poses to the public, and also failed to state reasons to support a finding the sentences were proportional to his conduct and the threat he poses to the community.

{¶7} Recently, in *State v. Foster*, \_\_Ohio St.3d\_\_, 2006 Ohio St.3d 856, the Ohio Supreme Court found R.C. 2929.14 (E)(4), which governs the imposition of consecutive sentences, violates the principles announced by the United States Supreme Court in *Blakely v. Washington* (2004), 542 US 296, 124 S.Ct. 2531, 159 L.Ed.2<sup>nd</sup> 403; therefore, is unconstitutional. Based upon *Foster*, we find appellant’s sentence is deemed void. Accordingly, we vacate the sentence and remand the matter to the trial court for a new sentencing hearing.

{18} The sentences entered by the Licking County Court of Common Pleas are vacated and the matter remanded.

By: Hoffman, P.J.

Farmer, J. and

Boggins, J. concur

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JUDGE WILLIAM B. HOFFMAN

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JUDGE SHEILA G. FARMER

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JUDGE JOHN F. BOGGINS

