

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

State of Ohio

Court of Appeals Nos. L-05-1215  
L-05-1216

Appellee

Trial Court Nos. CR-2002-3063  
CR-2003-1128

v.

James Perry Ball

**DECISION AND JUDGMENT ENTRY**

Appellant

Decided: May 19, 2006

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Timothy F. Braun, Assistant Prosecuting Attorney, for appellee.

Patricia Horner, for appellant.

\* \* \* \* \*

PIETRYKOWSKI, J.

{¶ 1} These consolidated appeals are before the court from judgments of the Lucas County Court of Common Pleas which resentenced defendant-appellant, James P. Ball, upon remand from this court. In Lucas County Court of Common Pleas Case No. CR 02-3063, Ball was sentenced to serve a term of three years in prison, after having been convicted of one count of robbery. In Lucas County Court of Common Pleas Case No. CR 03-1128, Ball was sentenced to serve a term of four years in prison, after having been convicted of another count of robbery. The sentences were ordered to be served

consecutively. Ball now challenges those sentences through the following assignment of error:

{¶ 2} "I. The sentence imposed was contrary to law."

{¶ 3} Upon review, we find that these cases are controlled by the Supreme Court of Ohio's decision in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. In *Foster*, the court held that R.C. 2929.14(E)(4) violates the Sixth Amendment to the United States Constitution, pursuant to *Blakely v. Washington* (2004), 542 U.S. 296, and *Apprendi v. New Jersey* (2000), 530 U.S. 466. Because the trial court relied on an unconstitutional statute when sentencing appellant, we find that the sentences are void and must be vacated. *Foster*, supra at ¶ 103-104. Accordingly, appellant's sole assignment of error is well-taken.

{¶ 4} On consideration whereof, this court finds that the Lucas County Court of Common Pleas erred in sentencing appellant and the judgments are reversed. The sentences are hereby vacated and the cases are remanded to the trial court for resentencing in accordance with *Foster*. The state is ordered to pay the costs of these appeals pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the records, fees allowed by law, and the fees for filing the appeals is awarded to Lucas County.

JUDGMENTS REVERSED.  
State v. Ball  
L-05-1215 & L-05-1216

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Peter M. Handwork, J.

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JUDGE

Mark L. Pietrykowski, J.

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JUDGE

William J. Skow, J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.