

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

State of Ohio

Court of Appeals No. L-05-1382

Appellee

Trial Court No. CR-0200202881

v.

Fernando Barringer

DECISION AND JUDGMENT ENTRY

Appellant

Decided: December 22, 2006

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Jevne Meader, Assistant Prosecuting Attorney, for appellee.

Daniel H. Grna, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the June 20, 2005 judgment of the Lucas County Court of Common Pleas, which sentenced appellant, Fernando Barringer, following his conviction of three offenses. The court imposed sentences for each offense and ordered that the sentences be served consecutively. Upon consideration of the assignments of

error, we reverse the decision of the lower court. Appellant asserts the following single assignment of error on appeal:

{¶ 2} "The Appellant's Sentence to Consecutive Terms Constitutes Reversible Error as R.C. 2929.14(E)(4), The Statute under which the Trial Court Imposed the Sentence, is Unconstitutional." [sic]

{¶ 3} Prior to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, consecutive sentences could only be imposed if the court found pursuant to R.C. 2929.14(E)(4) that consecutive sentences are necessary to protect the public or to punish the offender, are not disproportionate to the seriousness of the crime, and are based on the circumstances of the offense or the offender's criminal history. However, this statute was declared unconstitutional in *State v. Foster*, supra, ¶ 97. As a result, the trial court's judgment is void insofar as it imposed consecutive sentences based upon these findings. *Id.*, ¶ 103 and 104. Appellant's sole assignment of error is well-taken.

{¶ 4} Having found that the trial court did commit error prejudicial to appellant, the judgment of the Lucas Court of Common Pleas is reversed and remanded for resentencing consistent with this decision. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Lucas County.

JUDGMENT REVERSED.

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

Peter M. Handwork, J.

JUDGE

Arlene Singer, P.J.

George M. Glasser, J.
CONCUR.

JUDGE

JUDGE

Judge George M. Glasser, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

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>.