

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

State of Ohio

Court of Appeals No. L-05-1405

Appellee

Trial Court No. CR-0200502097

v.

Robert E. Jenkins

DECISION AND JUDGMENT ENTRY

Appellant

Decided: January 12, 2007

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Lori L. Olender, Assistant Prosecuting Attorney, for appellee.

Deborah Kovac Rump, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the November 17, 2005 judgment of the Lucas County Court of Common Pleas, which sentenced appellant, Robert E. Jenkins, following his conviction of three counts of gross sexual imposition and one count of attempted gross sexual imposition. The court sentenced appellant and ordered that the sentences for the first three counts are to be served consecutive to the sentence for the fourth count. Upon

consideration of the assignments of error, we affirm, in part, and reverse, in part, the decision of the lower court. Appellant asserts the following assignments of error on appeal:

{¶ 2} "I. Jenkins' pleas were not voluntarily and intelligently entered. The trial court should have permitted him to enter Alford pleas because Jenkins maintained his innocence throughout the proceedings.

{¶ 3} "II. Jenkins' sentence was unconstitutional under Foster because the trial court made findings of fact in imposing consecutive sentences that were not the minimum available. "

{¶ 4} We find the first assignment of error not well-taken because appellant never attempted to enter an *Alford* plea pursuant to *North Carolina v. Alford* (1970), 400 U.S. 25. While it is clear from the record that the trial court had a policy of not accepting such pleas, appellant never attempted to enter such a plea, thereby preserving his right to appeal.

{¶ 5} We find appellant's second assignment of error well-taken. Appellant's consecutive sentence is unconstitutional pursuant to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, ¶ 83. As a result, the trial court's judgment is void insofar as it imposed consecutive sentences. *Id.*, ¶ 103 and 104.

{¶ 6} Having found that the trial court did commit error prejudicial to appellant in part, the judgment of the Lucas Court of Common Pleas is affirmed in part and reversed in part. That part of the judgment which imposed consecutive sentences is void. This

case is remanded to the lower court for re-sentencing 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 AFFIRMED, IN PART,
AND REVERSED, IN PART.

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

William J. Skow, 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>.