

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

State of Ohio

Court of Appeals No. L-07-1127

Appellee

Trial Court No. CR-200602998

v.

Terry Bell

DECISION AND JUDGMENT ENTRY

Appellant

Decided: January 18, 2008

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Evy M. Jarrett, Assistant Prosecuting Attorney, for appellee.

Nicole I. Khoury, for appellant.

* * * * *

PIETRYKOWSKI, P.J.

{¶ 1} Defendant-appellant, Terry B. Bell, appeals the April 2, 2007 judgment of the Lucas County Court of Common Pleas, which sentenced appellant to five years of imprisonment for unlawful sexual conduct with a minor, R.C. 2907.04(A) and (B)(3), a third degree felony.

{¶ 2} Appellant raises the following assignment of error for our consideration:

{¶ 3} "1. The trial court committed prejudicial error when it sentenced appellant to a maximum sentence without stating on the record the findings and reasons required by statute."

{¶ 4} In his sole assignment of error, appellant contends that the trial court failed, as required under R.C. 2929.14(B), (C) and R.C. 2929.19(B)(2)(d), to state its findings at the sentencing hearing and enumerate its reasons for the findings.

{¶ 5} In February 2006, the Supreme Court of Ohio decided *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. In *Foster*, the court, applying *Blakely v. Washington* (2004), 542 U.S. 296, and *Apprendi v. New Jersey* (2000), 530 U.S. 466, held that R.C. 2929.14(B), (C) and 2929.19(B)(2), concerning the imposition of nonminimum and maximum sentences, violate a defendant's Sixth Amendment right to a trial by jury. *Id.* at paragraphs one and two of the syllabus. The *Foster* court severed these provisions from the sentencing code.

{¶ 6} In the present case, appellant was sentenced on April 2, 2007, over a year after the *Foster* decision was issued. Accordingly, because the provisions appellant relies on had been severed from the sentencing statutes, the trial court did not err when it failed reference them during sentencing. Appellant's assignment of error is not well-taken.

{¶ 7} On consideration whereof, we find that appellant was not prejudiced or prevented from having a fair proceeding and the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant 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.

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

Mark L. Pietrykowski, P.J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

<p>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.</p>
