

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

State of Ohio

Court of Appeals No. L-08-1435

Appellee

Trial Court No. CR0200801016

v.

Mitchell Moore

DECISION AND JUDGMENT

Appellant

Decided: February 5, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Brenda J. Majdalani, Assistant Prosecuting Attorney, for appellee.

Gretchen S. DeBacker, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a sentence of the Lucas County Court of Common Pleas. On September 25, 2008, appellant entered a plea to one count of felonious assault, one count of involuntary manslaughter, and one count of child endangering.

{¶ 2} On November 26, 2008, appellant was ordered to serve consecutive sentences of seven years, nine years, and two years, for each respective count, for a total term of incarceration of 18 years. Appellant claims his sentence violates the Supreme Court of Ohio decision in *State v. Foster* (2006), 109 Ohio St.3d 1, necessitating it be remanded to the trial court for resentencing. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 3} On appeal, appellant sets forth the following sole assignment of error:

{¶ 4} "The trial court erred when it made findings pursuant to R.C. § 2929.14(C) as to why it was sentencing Mr. Watson [sic] to the consecutive sentences for the offenses of nonsupport of dependants and possession of cocaine [sic] in violation of *State v. Foster* (2006), 109 Ohio St.3d 1."

{¶ 5} The implicit premise in appellant's assignment of error is that the court abused its discretion by making *Foster*-prohibited specific statutory findings. That contention is the crux of this case.

{¶ 6} The following undisputed facts are relevant to the issue raised on appeal. On December 26, 2007, a 23-month-old boy was rushed to the hospital suffering from cardiac arrest. The child died. Due to observations of the condition of the child's body, an investigation was conducted by both the Toledo Police Department and Children Services. The child exhibited numerous serious injuries. These injuries were in various stages of healing. During the course of the investigation by police, appellant admitted, inter alia, responsibility for tying the child's hands.

{¶ 7} On January 4, 2008, the grand jury indicted appellant on two counts of felonious assault, in violation of R.C. 2903.11(A)(1), a felony of the second degree, one count of involuntary manslaughter, in violation of R.C. 2903.04(A), a felony of the first degree, and one count of child endangering, in violation of R.C. 2912.22(B)(2), (E)(1), and (E)(3), a felony of the second degree. On September 25, 2008, appellant entered an *Alford* plea to all charges, except one count of felonious assault, which was dismissed as part of the plea agreement.

{¶ 8} On November 26, 2008, appellant was sentenced by the trial court. Prior to sentencing, and in response to appellant's claims of factors that ought to mitigate his sentence, the judge made the following statement:

{¶ 9} "I think the best way to do this is to put it on a fifth grade level. In a fifth grade level you are a bully because you take advantage of people that you know can't defend themselves, and that's what you did here. And having done that, and having been caught doing that, you now ask, you didn't even ask me, because you just apologized, but you look for mercy on this court. But as a bully, you'll be sentenced to the appropriate sentence, that we can't be concerned about your well-being, but rather your failure to have concern about the well-being of Tayvon."

{¶ 10} In his sole assignment of error, appellant claims the trial court erred by making specific findings in violation of the decision in *State v. Foster* (2006), 109 Ohio St.3d 1. Under post-*Foster* Ohio law, it is well-settled that trial courts are no longer required to make specific findings or give their reason for imposing maximum,

consecutive, or more than minimum sentencing. *Foster* vests trial courts with full discretion to impose any duration of prison sentence that falls within the statutory range. As such, appellate courts are required to review the trial court's sentences within the statutory range using an abuse of discretion standard, as enumerated in *State v. Johnson*, 6th Dist. App. No. L-08-1022, 2009-Ohio-271. The abuse of discretion standard requires consideration of whether a "trial court's decision was unreasonable, arbitrary, or unconscionable." *Id.* citing *Blakemore v. Blakemore* (1983), 5 Ohio St.3d at 219.

{¶ 11} This court has reviewed the sentencing transcript, paying particular attention to the portion of sentencing cited by appellant in support of his claim. The transcript clearly shows that the trial court made no findings barred by *Foster*. On the contrary, the trial court acted well within its discretion and in conformity with *Foster*. Accordingly, appellant's assignment of error is found not well-taken.

{¶ 12} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay costs of this appeal pursuant to App.R. 24.

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.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

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>.