

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

State of Ohio

Court of Appeals No. OT-10-013

Appellee

Trial Court No. 09-CR-078

v.

Thomas F. Pfeifer

DECISION AND JUDGMENT

Appellant

Decided: January 21, 2011

* * * * *

Mark E. Mulligan, Ottawa County Prosecuting Attorney, for appellee.

Christy L. Cole, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a sentencing judgment of the Ottawa County Court of Common Pleas. For the reasons set forth below, this court remands the matter to the trial court for the resentencing of appellant. This is necessitated based upon a term of sentence set forth in the sentencing judgment entry that is incongruous with the same term of sentence reflected in the sentencing transcript.

{¶ 2} Appellant, Thomas Pfeifer, sets forth the following sole assignment of error:

{¶ 3} "THE TRIAL COURT ERRED AS A MATTER OF LAW IN IMPOSING MAXIMUM CONSECUTIVE SENTENCES ON THOMAS PFEIFER."

{¶ 4} The following undisputed facts are relevant to the issue raised on appeal. On January 29, 2010, in conjunction with a negotiated plea agreement, appellant was found guilty of one count of assault, in violation of R.C. 2902.13, and one count of obstruction of official business, in violation of R.C. 2921.31.

{¶ 5} While the transcript of the March 11, 2010 sentencing of appellant imposed "sentences to run consecutively," the sentencing judgment entry filed on March 15, 2010, contrarily states that the, "Terms are to be served concurrently."

{¶ 6} We note that the sentencing transcript reflects that the trial court emphasized appellant's significant past criminal record as well as underscoring that additional criminal charges were filed against appellant during the pendency of this matter. The trial court concluded, "So fair to say that the Defendant has not responded well to the conditions, at least of bond, in this matter."

{¶ 7} In conjunction with the above, post-*Foster* precedent must be taken into consideration. *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. *Foster* and its progeny establish that trial courts are no longer required to make specific findings or give their reasons for imposing maximum, consecutive or more than minimum sentences. *State v. Calevero*, 6th Dist. No. WD-06-012, 2007-Ohio-1321.

{¶ 8} Ultimately, in scenarios where there is an undisputed conflict in a term of sentence, the matter must be remanded for resentencing. As succinctly set forth in *State v. Quinones*, 8th Dist. No. 89221, 2007-Ohio-6077, "If there exists a variance between the sentence pronounced in open court and the sentence imposed by a court's judgment entry, a remand for resentencing is required." Thus, given the conflict between the sentencing transcript and sentencing judgment entry on whether the sentences were to be imposed on a consecutive or concurrent basis, we remand this matter to the trial court for the resentencing of appellant. Appellant's sole assignment of error is not well-taken.

{¶ 9} Based on the foregoing, this matter is reversed and remanded to the Ottawa County Court of Common Pleas for the requisite resentencing of appellant. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24.

REVERSED AND REMANDED
FOR RESENTENCING.

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

Thomas J. Osowik, P.J.

JUDGE

Keila D. Cosme, J.

CONCUR.

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>.