

[Cite as *State v. Williams*, 2006-Ohio-1939.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 86552

STATE OF OHIO	:	
	:	JOURNAL ENTRY
Plaintiff-Appellee	:	
	:	and
-vs-	:	
	:	OPINION
AARON WILLIAMS	:	
	:	
Defendant-Appellant	:	
	:	

DATE OF ANNOUNCEMENT OF DECISION:	<u>APRIL 20, 2006</u>
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CHARACTER OF PROCEEDING:	Criminal appeal from Common Pleas Court Case No. CR-459668
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JUDGMENT:	Vacated and Remanded For Resentencing.
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DATE OF JOURNALIZATION:

APPEARANCE:

For Plaintiff-Appellee:	WILLIAM D. MASON Cuyahoga County Prosecutor KEVIN R. FILIATRAUT Assistant County Prosecutor 8 <sup>th</sup> Floor Justice Center 1200 Ontario Street Cleveland, Ohio 44113
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For Defendant-Appellant:	THOMAS A. REIN Leader Building, Suite 940 526 Superior Avenue Cleveland, Ohio 44114
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PATRICIA ANN BLACKMON, J.:

{¶ 1} Appellant Aaron Williams appeals the trial court's imposition of consecutive and maximum sentences. Williams assigns the following errors for our review:

"I. The trial court erred by ordering appellant to serve a consecutive sentence without making the appropriate findings required by R.C. 2929.14(e)(4)."

"II. The trial court erred when it sentenced appellant to the maximum sentence without making the appropriate findings."

{¶ 2} Having reviewed the record and pertinent law, we vacate Williams' sentence and remand for re-sentencing in light of *State v. Foster*<sup>1</sup>. The apposite facts follow.

{¶ 3} On December 7, 2004, the Cuyahoga County Grand Jury indicted Williams for six counts of drug trafficking, three counts of drug possession, and one count of permitting drug abuse. Williams pled not guilty at his arraignment. On April 11, 2005, after several pre-trials had been held, Williams entered guilty pleas to several counts according to a plea agreement reached with the State. Pursuant to the plea agreement, Williams pled guilty to three counts of drug trafficking and the sole count of permitting drug abuse.

{¶ 4} On May 19, 2005, the trial court held a sentencing hearing and discussed the facts of the offenses and the details of

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<sup>1</sup> \_\_\_Ohio St.3d \_\_\_, 2006-Ohio-856.

the pre-sentence investigative report. The trial court sentenced Williams to two 18-month sentences, which were to be served consecutively for a total period of incarceration of three years.

### **Consecutive Sentence**

{¶ 5} In the first assigned error, Williams argues the trial court erred in imposing a consecutive sentence. We agree based on the Ohio Supreme Court's recent decision in *State v. Foster*.<sup>2</sup>

{¶ 6} In *Foster*, the Supreme Court held that several provisions of S.B. 2, including R.C. 2929.14(E), which governs the imposition of consecutive sentences, violate *Blakely*. Specifically as it pertains to R.C. 2929.14(E), the Court held: "because the total punishment increases through consecutive sentences only after judicial findings beyond those determined by a jury or stipulated to by a defendant, R.C. 2929.14(E)(4) violates principles announced in *Blakely*."<sup>3</sup> The Court severed R.C. 2929.14(E) from the sentencing statutes based on its finding that *Blakely* rendered it unconstitutional.

{¶ 7} As a result, the trial court is no longer obligated to give reasons or findings prior to imposing a consecutive sentence. The Court held that:

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<sup>2</sup> \_\_ Ohio St.3d \_\_, 2006-Ohio-856.

<sup>3</sup>Id. at ¶67.

"[Cases] pending on direct review must be remanded to trial courts for new sentencing hearings not inconsistent with this opinion. \*\*\*

"Under R.C. 2929.19 as it stands without (B)(2), the defendants are entitled to a new sentencing hearing although the parties may stipulate to the sentencing court acting on the record before it. Courts shall consider those portions of the sentencing code that are unaffected by today's decision and impose any sentence within the appropriate felony range. If an offender is sentenced to multiple prison terms, the court is not barred from requiring those terms to be served consecutively. While the defendants may argue for reductions in their sentences, nothing prevents the state from seeking greater penalties. *United States v. DiFrancesco* (1980), 449 U.S. 117, 134-136, 101 S.Ct. 426, 66 L.Ed.2d. 328."<sup>4</sup>

{¶8} Thus, in accordance with *Foster*, we vacate Williams' sentence and remand for re-sentencing. In doing so, we note the Ohio Supreme Court's clarification in *State v. Mathis*:<sup>5</sup>

"Although after *Foster*, the trial court is no longer compelled to make findings and give reasons at the sentencing hearing since R.C. 2929.19(B)(2) has been excised, nevertheless, in exercising its discretion the court must carefully consider the statutes that apply to every felony case. Those include R.C. 2929.11, which specifies the purpose of sentencing, and R.C. 2929.12, which provides guidance in considering factors relating to the seriousness of the offense and recidivism of the offender. In addition, the sentencing court must be guided by statutes that are specific to the case itself."<sup>6</sup>

Accordingly, Williams' first assigned error is sustained.

#### Maximum Sentence

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<sup>4</sup>Id. at ¶104-105.

<sup>5</sup> \_\_ Ohio St.3d \_\_, 2006-Ohio-855.

<sup>6</sup>Id. at ¶38.

{¶ 9} In the second assigned error, Williams contends the trial court erred in imposing a maximum sentence without making the appropriate findings.

{¶ 10} Because of our disposition of the first assigned error, this assigned error is moot and need not be addressed.<sup>7</sup> However, we note as a result of *Foster*, "[t]rial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings and give reasons for imposing maximum, consecutive or more than the minimum sentence."<sup>8</sup>

{¶ 11} This matter is affirmed as to William's guilty plea; sentence vacated and remanded for resentencing.

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<sup>7</sup>App.R. 12(A)(1)(c).

<sup>8</sup>*Foster*, at paragraph 7 of the syllabus and *State v. Mathis* \_\_ Ohio St.3d \_\_, 2006-Ohio-855, paragraph 3 of the syllabus.

It is ordered that appellant and appellee share the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, P.J., and

MICHAEL J. CORRIGAN, J., CONCUR.

PATRICIA ANN BLACKMON  
JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).