

[Cite as *State v. Woods*, 2006-Ohio-2089.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 86664

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	JOURNAL ENTRY
	:	
-VS-	:	AND
	:	
CARL WOODS	:	OPINION
	:	
Defendant-Appellant	:	

Date of Announcement of Decision:	APRIL 27, 2006
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Character of Proceeding:	Criminal appeal from Court of Common Pleas Case No. CR-459804
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Judgment:	Sentence vacated; remanded for resentencing.
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Date of Journalization:

Appearances:

For Plaintiff-Appellee:	WILLIAM D. MASON Cuyahoga County Prosecutor KRISTEN L. LUSNIA, Assistant Prosecuting Attorney 1200 Ontario Street Cleveland, Ohio 44113
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For Defendant-Appellant:	NANCY SCARCELLA, ESQ. 4403 St. Clair Avenue Cleveland, Ohio 44103
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JAMES J. SWEENEY, P.J.:

{¶ 1} Defendant-appellant, Carl Woods ("defendant"), challenges the maximum, consecutive sentences imposed upon him by the trial court for his convictions of attempted murder, aggravated burglary, and aggravated robbery. For the reasons that follow, we vacate defendant's sentence and remand for resentencing.

{¶ 2} Defendant's sole assignment of error provides:

{¶ 3} "I. The trial court erred when it sentenced the defendant to maximum and consecutive prison terms where the defendant who previously had not served a prison term has plead guilty to three felonies of the first degree all of which arose from a single incidence."

{¶ 4} The trial court imposed maximum, consecutive sentences pursuant to the provisions of R.C. 2929.14(B), (C), and (E), which the Ohio Supreme Court has since declared unconstitutional and excised from the statutory scheme. *State v. Foster*, ____ Ohio St.3d ____, 2006-Ohio-856, ¶¶1-4, applying *United States v. Booker* (2005), 543 U.S. 220; *Blakely v. Washington* (2004), 542 U.S. 296; and *Apprendi v. New Jersey* (2000), 530 U.S. 466. As a result, "[t]rial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences." *Foster*, at paragraph 7 of the syllabus and *State v. Mathis* ____ Ohio St.3d ____, 2006-Ohio-855,

paragraph 3 of the syllabus. Nonetheless, defendants that were sentenced under unconstitutional and now void statutory provisions must be resentenced. *Foster*, 2006-Ohio-856, ¶¶103-106.

{¶ 5} Pursuant to the mandates of *Foster*, we sustain defendant's assignment of error, vacate defendant's sentence, and remand this matter to the trial court for resentencing.

Sentence vacated; cause remanded for resentencing.

It is ordered that appellant recover of appellee his 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. Sentence vacated and case remanded to the trial court for resentencing.

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

DIANE KARPINSKI, J., and
MICHAEL J. CORRIGAN, J., CONCUR.

JAMES J. SWEENEY
PRESIDING 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. 112, Section 2(A)(1).