

[Cite as *State v. Donahue*, 2006-Ohio-3321.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 87071

STATE OF OHIO	:	ACCELERATED DOCKET
	:	
Plaintiff-appellee	:	JOURNAL ENTRY
	:	
vs.	:	AND
	:	
JEFFREY DONAHUE	:	OPINION
	:	
Defendant-appellant	:	
	:	
DATE OF ANNOUNCEMENT OF DECISION	:	<u>June 29, 2006</u>
	:	
CHARACTER OF PROCEEDINGS	:	Criminal appeal from
	:	Common Pleas Court
	:	Case No. CR-465958
	:	
JUDGMENT	:	SENTENCE VACATED; REMANDED
	:	FOR RESENTENCING.
	:	
DATE OF JOURNALIZATION	:	_____
APPEARANCES:		
For Plaintiff-appellee:		WILLIAM D. MASON Cuyahoga County Prosecutor BLAISE D. THOMAS, ESQ. Assistant Prosecuting Attorney 1200 Ontario Street, 8th Floor Cleveland, Ohio 44113
For Defendant-appellant:		JAMES A. JENKINS, ESQ. 2000 Standard Building 1370 Ontario Street Cleveland, Ohio 44113

SEAN C. GALLAGHER, P.J.:

{¶ 1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1, the trial court records and briefs of counsel.

{¶ 2} Defendant-appellant, Jeffrey Donahue ("defendant"), challenges the seven-year prison sentence imposed on him by the trial court for involuntary manslaughter and leaving the scene of the accident. Following recent precedent from the Ohio Supreme Court, we vacate the sentence and remand for resentencing.

{¶ 3} The trial court imposed more than the minimum sentence on defendant pursuant to the provisions of R.C. 2929.14(B), which the Ohio Supreme Court has since declared unconstitutional and excised from the statutory scheme. *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, ¶¶1-4, applying *United States v. Booker* (2005), 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621; *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403; and *Apprendi v. New Jersey* (2000), 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435.

{¶ 4} Although defendant does not expressly cite to *Blakely*, his sole assignment of error depends on a statutory provision that has been excised from the law by the Ohio Supreme Court in *Foster*.

Specifically, defendant maintains that the trial court erred by imposing greater than the minimum sentence for a first-time offender under the former provisions of R.C. 2929.14(B).

{¶ 5} We note that "trial courts [now] 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; *State v. Mathis*, 109 Ohio St.3d 54, 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.

{¶ 6} Although we remand the case for resentencing, we nevertheless agree with the State that the original record by the trial court fully outlines the basis for the underlying sentence and that the original sentence falls within the statutory parameters outlined by the legislature.

{¶ 7} 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; case 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 Cuyahoga County Court of Common Pleas to carry this

judgment into execution. Sentence vacated and case remanded for resentencing.

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

KENNETH A. ROCCO, J., and

MARY EILEEN KILBANE, J., CONCUR.

SEAN C. GALLAGHER
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).