

[Cite as *State v. Arias*, 2006-Ohio-3358.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 86860

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	JOURNAL ENTRY
	:	
-VS-	:	AND
	:	
ROBERT ARIAS	:	OPINION
	:	
Defendant-Appellant	:	

Date of Announcement of Decision:	JUNE 29, 2006
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Character of Proceeding:	Criminal appeal from Court of Common Pleas Case No. CR-464955
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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 GARY A. VICK, JR., Assistant Prosecuting Attorney 1200 Ontario Street Cleveland, Ohio 44113
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For Defendant-Appellant:	SUSAN J. MORAN, ESQ. 55 Public Square Building Suite 1010 Cleveland, Ohio 44113
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JAMES J. SWEENEY, P.J.:

{¶ 1} Defendant-appellant, Robert Arias ("defendant"), challenges the imposition of more than the minimum sentence in violation of R.C. 2929.14(B). 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 imposed more than the minimum sentence upon appellant in violation of R.C. 2929.14, in violation of *Blakely v. Washington* (2004), 542 U.S."

{¶ 4} The trial court imposed a four-year prison term, which exceeded the minimum prison term mandated absent specific judicial findings set forth in R.C. 2929.14(B). However, the Ohio Supreme Court has since declared unconstitutional and excised those, among other, sentencing provisions 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; *Blakely v. Washington* (2004), 542 U.S. 296; and *Apprendi v. New Jersey* (2000), 530 U.S. 466.

{¶ 5} Following *Foster*, "trial 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; *State v. Mathis*, \_\_\_, Ohio St.3d 2006-Ohio-855 at 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} Pursuant to the mandates of *Foster*, we sustain defendant's assignment of error, vacate his sentence, and remand 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 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  
KENNETH A. ROCCO, 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).