

[Cite as *State v. Jefferson*, 2006-Ohio-3714.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 87080

STATE OF OHIO	:	
	:	JOURNAL ENTRY
Plaintiff-Appellee	:	
	:	AND
vs.	:	
	:	OPINION
KENNETH JEFFERSON	:	
	:	
Defendant-Appellant	:	
	::	
DATE OF ANNOUNCEMENT	:	
OF DECISION	:	<u>July 20, 2006</u>
	:	
CHARACTER OF PROCEEDINGS	:	Criminal appeal from
	:	Common Pleas Court
	:	Case Nos. CR-462490 and
	:	CR-463782
	:	
JUDGMENT	:	SENTENCE VACATED;
	:	REMANDED FOR RESENTENCING.
	:	
DATE OF JOURNALIZATION	:	

APPEARANCES:

For plaintiff-appellee	WILLIAM D. MASON, ESQ. Cuyahoga County Prosecutor By: DIANE SMILANICK, ESQ. MATTHEW E. MEYER, ESQ. Assistant County Prosecutors Justice Center - 8th Floor 1200 Ontario Street Cleveland, Ohio 44113
For defendant-appellant	ROBERT L. TOBIK, ESQ. Cuyahoga County Public Defender By: ERIKA B. CUNLIFFE, ESQ. Assistant Public Defender 1200 West Third Street 100 Lakeside Place Cleveland, Ohio 44113

SEAN C. GALLAGHER, J.:

{¶ 1} Defendant-appellant Kenneth Jefferson appeals his sentence from the Cuyahoga County Court of Common Pleas. Finding error in the proceedings below, we vacate his sentence and remand the case to the trial court for resentencing.

{¶ 2} Jefferson was sentenced in two separate cases. He was sentenced to the maximum term of incarceration in both cases. In each case, the sentence was ordered to run consecutive to the sentence in the other case. Jefferson appeals, advancing one assignment of error for our review, which reads as follows:

{¶ 3} "Kenneth Jefferson was deprived of his liberty without due process of law when the trial court imposed maximum and consecutive sentences based on inaccurate information and without complying with Ohio's current sentencing requirements."

{¶ 4} Jefferson argues that the trial court failed to make the mandatory statutory findings required for the imposition of maximum consecutive sentences. In *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, the Ohio Supreme Court declared several sections of Ohio's sentencing statute unconstitutional and excised them from the statutory scheme. The state concedes that Jefferson was sentenced under the unconstitutional sections and, as a result, must be resentenced. *Foster*, supra, ¶103-106. Now, "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 seven of the syllabus, and *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, paragraph three of the syllabus. Consequently, we sustain Jefferson's sole assignment of error, vacate his sentence, and remand this matter to the trial court for resentencing.

Sentence vacated; cause remanded for resentencing.

This cause is vacated and remanded to the lower court for further proceedings consistent with this opinion.

It is, therefore, ordered that said appellant recover of said appellee 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.

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

COLLEEN CONWAY COONEY, P.J., AND

CHRISTINE T. MCMONAGLE, J., CONCUR.

SEAN C. GALLAGHER  
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).