

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2007-L-077
MARK D. HUNGER, JR.,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 04 CR 000551.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Alana A. Rezaee*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

R. Paul LaPlante, Lake County Public Defender, and *Vanessa R. Clapp*, Assistant Public Defender, 125 East Erie Street, Painesville, OH 44077 (For Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} Appellant, Mark David Hunger, Jr., appeals from the January 16, 2007 judgment entry of the Lake County Court of Common Pleas, which resentenced him post-*Foster*. For the following reasons, we affirm.

{¶2} **Statement of Facts and Procedural History**

{¶3} Appellant (“Mr. Hunger”) pled guilty and was convicted of one count of felonious assault, a felony of the second degree, in violation of R.C. 2903.11(A)(2). Mr. Hunger’s conviction stems from an altercation that occurred with his ex-wife’s former

abusive lover. Upon some provocation, he drove his vehicle into a RTA bus shelter in an attempt to crash into the victim. Besides his wife's former lover, there were two other victims in this case; two women were also in the shelter waiting for the bus when the crash occurred.

{¶4} Mr. Hunger was originally sentenced on November 23, 2004 to a four-year term of imprisonment on the count of felonious assault. He timely appealed to this court, where we remanded for resentencing pursuant to *State v. Foster* (2006), 109 Ohio St.3d 1, 2006-Ohio-856, on December 12, 2006.

{¶5} Accordingly, after holding a hearing on January 8, 2007, the trial court resentenced Mr. Hunger to serve the same four-year sentence imposed previously.

{¶6} Mr. Hunger now timely appeals, raising the following five assignments of error:

{¶7} “[1.] The trial court erred when it sentenced the defendant-appellant to more-than-the-minimum prison terms in violation of the due process and ex post facto clauses of the Ohio and United States Constitutions.

{¶8} “[2.] The trial court erred when it sentenced the defendant-appellant to more-than-the-minimum prison terms in violation of defendant-appellant’s right to due process.

{¶9} “[3.] The trial court erred when it sentenced the defendant-appellant to more-than-the-minimum prison terms based on the Ohio Supreme Court’s severance of the offending provisions under *Foster*, which was an act in violation of the principle of separation of powers.

{¶10} “[4.] The trial court erred when it sentenced the defendant-appellant to more-than-the-minimum prison terms contrary to the rule of lenity.

{¶11} “[5.] The trial court erred when it sentenced the defendant-appellant to more-than-the-minimum prison terms contrary to the intent of the Ohio legislators.”

{¶12} The arguments raised by Mr. Hunger in his assignments of error are identical to those arguments raised and rejected in numerous prior decisions of this court. See *State v. Lloyd*, 11th Dist. No. 2007-L-029, 2007-Ohio-5503; *State v. Sprowls*, 11th Dist. No. 2007-L-049, 2007-Ohio-6408; *State v. Lewis*, 11th Dist. No. 2006-L-224, 2007-Ohio-3014; *State v. Schaub*, 11th Dist. No. 2006-L-126, 2007-Ohio-2853; *State v. Green*, 11th Dist. Nos. 2005-A-0069 and 2007-A-0070, 2006-Ohio-6695; *State v. Elswick*, 11th Dist. No. 2006-L-075, 2006-Ohio-7011; *State v. Asbury*, 11th Dist. No. 2006-L-097, 2006-Ohio-1073; *State v. Anderson*, 11th Dist. No. 2006-L-142, 2007-Ohio-1062; *State v. Spicuzza*, 11th Dist. No. 2006-L-141, 2007-Ohio-783.

{¶13} These same arguments have also been consistently rejected by other Ohio appellate districts and federal courts. See *State v. Gibson*, 10th Dist. No 06AP-509, 2006-Ohio-6899; *State v. Moore*, 3d Dist. No. 1-06-51, 2006-Ohio-6860; *United States v. Portillo-Quezada* (C.A.10 2006) 469 F.3d 1345, 1354-1356, and the cases cited therein.

{¶14} Thus, based on our prior decisions, Mr. Hunger’s assignments of error are without merit.

{¶15} The judgment of the Lake County Court of Common Pleas is affirmed.

DIANE V. GRENDALL, P.J.,

TIMOTHY P. CANNON, J.,

concur.