

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals Nos. L-06-1057
L-06-1060

Appellee

Trial Court Nos. CR-0200501743
CR-0200202713

v.

Robert L. Hayes

DECISION AND JUDGMENT ENTRY

Appellant

Decided: April 6, 2007

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney,
and Jennifer L. Donovan, Assistant Prosecuting Attorney, for appellee.

David C. Bruhl, for appellant.

* * * * *

PIETRYKOWSKI, P.J.

{¶ 1} These consolidated appeals are before the court from judgments of the Lucas County Court of Common Pleas that sentenced defendant-appellant, Robert L. Hayes, to consecutive, non-minimum terms of imprisonment after finding him in violation of the terms of his community control in two cases (common pleas case No. CR2002-2713, conviction for attempted sexual battery, and common pleas case No. CR2005-1743, conviction for failure to notify). Hayes now challenges his sentences through the following assignment of error:

{¶ 2} "The trial court erred when it imposed consecutive sentences based upon facts not within the jury verdict or admitted by the defendant-appellant pursuant to R.C. 2929.14(E)(4). Reliance on said statute violated defendant-appellant's constitutional rights pursuant to the Ohio Supreme Court's ruling in *State v. Foster*, 109 Ohio St.3d 1."

{¶ 3} Upon review, we find that this case is controlled by the Supreme

{¶ 4} Court of Ohio's decision in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. In *Foster*, the court held that R.C. 2929.14(B) and (E)(4) violate the Sixth Amendment to the United States Constitution, pursuant to *Blakely v. Washington* (2004), 542 U.S. 296, and *Apprendi v. New Jersey* (2000), 530 U.S. 466. Because the trial court relied on these unconstitutional statutes when sentencing appellant to consecutive and non-minimum terms in prison, we find that the sentences are void and must be vacated. *Foster* at ¶ 103-104. Accordingly, appellant's sole assignment of error is found well-taken.

{¶ 5} On consideration whereof, we find that the judgments of the Lucas County Court of Common Pleas are reversed and appellant's sentences are vacated. These matters are remanded to the trial court for a new sentencing hearing in accordance with *Foster*, supra. The state is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the records, fees allowed by law, and the fees for filing the appeals is awarded to Lucas County.

JUDGMENTS REVERSED.

State v. Hayes
L-06-1057, L-06-1060

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, P.J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.