

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

State of Ohio

Court of Appeals Nos. L-08-1258
L-08-1259

Appellee

Trial Court Nos. CR05-1209
CR04-3093

v.

Verdell Starks

DECISION AND JUDGMENT

Appellant

Decided: December 31, 2009

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Brenda J. Majdalani, Assistant Prosecuting Attorney, for appellee.

Dan M. Weiss, for appellant.

* * * * *

HANDWORK, P.J.

{¶ 1} This case is before the court on appeal from the judgment of the Lucas County Court of Common Pleas which resentenced appellant, Verdell Starks, on

November 30, 2007,¹ in conformity with *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, following a remand from this court issued on September 21, 2007, *State v. Starks*, 6th Dist. No. L-05-1419, 2007-Ohio-4897. Appellant presents the following sole assignment of error on appeal:

{¶ 2} "The trial court's sentence violated the ex post facto clause of the United States Constitution and thereby appellant's Sixth Amendment rights."

{¶ 3} Appellant failed to raise his arguments at sentencing. As such, all the issues raised on appeal are waived, absent plain error. *State v. Boles*, 6th Dist. No. L-07-1064, 2007-Ohio-6880, ¶ 8, citing *State v. Ferreira*, 6th Dist. No. L-06-1282, 2007-Ohio-4902, ¶ 10. In *State v. Elmore*, 122 Ohio St.3d 472, 2009-Ohio-3478, paragraph one of the syllabus, the Ohio Supreme Court held that "Resentencing pursuant to *State v. Foster* * * * for offenses that occurred prior to February 27, 2006, does not violate the Sixth Amendment right to a jury trial or the Ex Post Facto or Due Process Clauses of the United States Constitution." Accordingly, we find appellant's sole assignment of error not well-taken.

{¶ 4} Having found that the trial court did not commit error prejudicial to appellant, the judgment of the Lucas Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

¹The judgment entry of sentence was journalized on December 4, 2007.

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, P.J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Charles D. Abood, 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>.