

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 11a0885n.06

No. 10-3331

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

FILED
Dec 27, 2011
LEONARD GREEN, Clerk

JOSEPH FEATHERKILE,)
)
 Petitioner-Appellant,)
)
v.)
)
WANZA JACKSON, Warden,)
)
 Respondent-Appellee.)

ON APPEAL FROM THE
UNITED STATES DISTRICT
COURT FOR THE SOUTHERN
DISTRICT OF OHIO

O P I N I O N

BEFORE: COLE, MCKEAGUE, and GRIFFIN, Circuit Judges.

PER CURIAM. Petitioner-Appellant Joseph Featherkile was convicted by a Hamilton County, Ohio, jury on November 22, 1999, on four counts of gross sexual imposition in violation of Ohio Revised Code § 2907.05(A)(4). The trial court sentenced Featherkile to two years' imprisonment for the first count and five years for each of the three remaining counts, all to be served consecutively, for a total of seventeen years. Featherkile was resentenced in 2006 under the new, discretionary sentencing regime ushered in by the Ohio Supreme Court's application of *United States v. Booker*, 543 U.S. 220 (2005), to the Ohio's sentencing structure. See *State v. Foster*, 845 N.E.2d 470 (Ohio 2006). At his 2006 resentencing, the court imposed the same term of imprisonment—seventeen years. After exhausting his remedies before the Ohio appellate courts, Featherkile filed a petition for a writ of habeas corpus, arguing that his resentencing based on the new discretionary sentencing procedure violates the *ex post facto* and due process clauses of the

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Fourteenth Amendment to the United States Constitution. In particular, Featherkile argues that his new sentence imposes a new and retroactive punishment because it is greater than the “presumptive minimum” sentence applicable prior to *Foster*. The district court denied the petition.

Featherkile’s claim is the same as that advanced by the petitioner in our recent case of *Ruhlman v. Brunsman*, No. 09-4523 (6th Cir. Dec. 23, 2011). As we explained in *Ruhlman*, resentencings pursuant to Ohio’s discretionary sentencing scheme established by *Foster*, even when it results in a sentence greater than the pre-*Foster* presumptive minimum sentence, do not violate *ex post facto* or other due process clause principles. *Ruhlman*, No. 09-4523, slip op. at 6-12. Thus, for the reasons stated in *Ruhlman v. Brunsman*, we AFFIRM the denial of the petition by the district court for a writ of habeas corpus.