

[Cite as *State v. Reid*, 2006-Ohio-3978.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 87290

STATE OF OHIO :
 :
 Plaintiff-Appellee :
 :
 vs. :
 :
 PERRY D. REID :
 :
 Defendant-Appellant :

JOURNAL ENTRY

and

OPINION

DATE OF ANNOUNCEMENT
OF DECISION:

August 3, 2006

CHARACTER OF PROCEEDING:

Criminal appeal from
Court of Common Pleas
Case No. CR-432128

JUDGMENT:

SENTENCE VACATED AND CASE
REMANDED FOR RESENTENCING

DATE OF JOURNALIZATION:

APPEARANCES:

For Plaintiff-Appellee:

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For Defendant-Appellant:

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Assistant State Public Defender
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COLLEEN CONWAY COONEY, P.J.:

{¶ 1} Defendant-appellant, Perry Reid ("Reid"), appeals his sentence. Finding some merit to the appeal, we vacate his sentence and remand for resentencing.

{¶ 2} In 2003, Reid was convicted of four counts of rape, gross sexual imposition, and kidnapping and was sentenced to life in prison. This court affirmed his conviction, but remanded the matter for a new sentencing hearing and merger of the allied offenses. *State v. Reid*, Cuyahoga App. No. 83206, 2004-Ohio-2018.

{¶ 3} At resentencing, the trial court sentenced Reid to life in prison on counts one and two of the indictment, which involved rape of a minor less than 13 years of age. The four kidnapping convictions were merged with counts one and two. The court sentenced him to 10 years on counts eleven and twelve, which involved rape of a minor over the age of 13. The court further sentenced Reid to five years on counts 35, 36, 37, and 38 for gross sexual imposition of a minor less than 13 years of age, and eighteen months on counts 45, 46, 47, and 48 for gross sexual imposition of a minor over the age of 13. All sentences were to be served consecutively.

{¶ 4} Reid appeals his sentence, arguing as his sole assignment of error that the trial court erred in imposing a sentence pursuant to statutes held to be unconstitutional by *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. The State concedes

that Reid's sentence should be vacated and the case remanded for resentencing. We agree.

{¶ 5} The trial court imposed maximum and consecutive sentences pursuant to R.C. 2929.14(B) and (C) and (E)(4), 2929.19(B)(2), 2929.41(A), which the Ohio Supreme Court has since declared unconstitutional and excised from the statutory scheme. *Foster*, supra, applying *United States v. Booker* (2005), 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621; *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403, and *Apprendi v. New Jersey* (2000), 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435.

{¶ 6} As a result, "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 7 of the syllabus, and *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, paragraph three of the syllabus. A defendant, however, who was sentenced under the unconstitutional and now void statutory provisions must be resentenced. *Foster*, supra at ¶¶103-106.

{¶ 7} We conclude that the trial court relied on severed, excised, and unconstitutional statutes in imposing Reid's maximum and consecutive sentences. Therefore, his sentences are vacated, and the matter is remanded for resentencing in accordance with *Foster*.

{¶ 8} We further find Reid's argument that *Foster* violates his right against ex post facto legislation to be premature. This issue is not ripe for our review because Reid has yet to be sentenced under *Foster*. See *State v. Rady*, Lake App. No. 2006-L-012, 2006-Ohio-3434; *State v. Pitts*, Allen App. No. 01-06-02, 2006-Ohio-2796; *State v. Lathan*, Lucas App. No. L-03-1188, 2006-Ohio-2490; *State v. Sanchez*, Defiance App. No. 4-05-47, 2006-Ohio-2141; *State v. McKercher*, Allen App. No. 1-05-83, 2006-Ohio-1792.

{¶ 9} Accordingly, the assignment of error is sustained in part, and overruled in part.

Sentence vacated, and case remanded for resentencing.

It is ordered that appellant recover of appellee his costs herein taxed.

It is ordered that a special mandate issue from this court to 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.

ANTHONY O. CALABRESE, JR., J. CONCURS

MICHAEL J. CORRIGAN, J. CONCURS IN
JUDGMENT ONLY

COLLEEN CONWAY COONEY
PRESIDING 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).