

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

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2003-A-0045
SEETREON ANDREE DOTHARD,	:	
Defendant-Appellant.	:	

Criminal appeal from the Court of Common Pleas, Case No. 01 CR 44.

Judgment: Reversed and remanded for resentencing.

Thomas L. Sartini, Ashtabula County Prosecutor, and *John N. Zomoida, Jr.*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047 (For Plaintiff-Appellee).

Erik M. Jones, One Cascade Plaza, Suite 1445, Akron, OH 44308 (For Defendant-Appellant).

WILLIAM M. O'NEILL, J.

{¶1} Appellant, See-Treon Andree Dothard (“Dothard”), appeals the judgment entered by the Ashtabula County Court of Common Pleas. The trial court sentenced Dothard to a total prison term of seven years for his convictions for kidnapping and aggravated robbery.

{¶2} In 2001, Dothard and Tony Olds (“Olds”) drove from Youngstown, Ohio to Saybrook Township in Ashtabula County. They entered the Nordix Gun Shop. Olds

pulled a gun on the owner and told Dothard to tape his hands. Dothard attempted to tape the owner's hands, but the owner escaped into a back room.

{¶3} As a result of these events, Dothard was convicted of aggravated robbery, a first-degree felony, and kidnapping, a second-degree felony. Dothard was originally sentenced to concurrent seven-year prison terms for these convictions. Dothard appealed his convictions and original sentence to this court. This court affirmed Dothard's convictions, but reversed the matter for resentencing due to the trial court's failure to inform Dothard that post-release control was part of his sentence.¹

{¶4} The trial court conducted a resentencing hearing. The trial court adequately informed Dothard about post-release control. The trial court imposed seven-year sentences for the kidnapping and aggravated robbery convictions, to be served concurrently.

{¶5} Dothard raises two assignments of error on appeal:

{¶6} “[1.] The trial court abused its discretion by not sentencing appellant to community control sanctions, pursuant to R.C. 2929.13(D).

{¶7} “[2.] The trial court abused its discretion by sentencing appellant to more than the minimum term of incarceration, in violation of R.C. 2929.14(B).”

{¶8} In addition to his assigned errors, Dothard filed a motion to supplement his appellate brief with new case authority, which was granted by this court. The additional authorities are *Blakely v. Washington* and *United States v. Booker*, along with various Ohio appellate cases interpreting them.² We will address the *Blakely* issue first.

1. *State v. Dothard*, 11th Dist. No. 2001-A-0066, 2003-Ohio-600.

2. See *Blakely v. Washington* (2004), 542 U.S. 296 and *United States v. Booker* (2005), 543 U.S. 220.

{¶9} The Supreme Court of Ohio has recently addressed the implication of *Blakely v. Washington* on Ohio’s sentencing structure.³ In *State v. Foster*, the Supreme Court of Ohio held that “[b]ecause R.C. 2929.14(B) and (C) and 2929.19(B)(2) require judicial factfinding before imposition of a sentence greater than the maximum term authorized by a jury verdict or admission of the defendant, they are unconstitutional.”⁴

{¶10} To remedy the sentencing statutes, the Supreme Court of Ohio severed the unconstitutional portions requiring judicial factfinding.⁵

{¶11} The trial court’s sentences contain findings regarding “more than the minimum,” which were arrived at via judicial factfinding. Thus, pursuant to *State v. Foster*, the sentences are unconstitutional.⁶ As a remedy for the unconstitutional sentences, the Supreme Court of Ohio has held the sentences should be vacated and that cases “pending on direct review must be remanded to trial courts for new sentencing hearings[.]”⁷

{¶12} Dothard’s second assignment has merit to the extent indicated. Since this matter is being reversed and remanded for resentencing, Dothard’s first assignment of

3. *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856.

4. *Id.*, at paragraph one of the syllabus, following *Apprendi v. New Jersey* (2000), 530 U.S. 466 and *Blakely v. Washington*, *supra*.

5. *State v. Foster*, paragraph two of the syllabus, following *United States v. Booker*, 543 U.S. 220.

6. *State v. Foster*, paragraph one of the syllabus.

7. *Id.* at ¶103-104.

error is moot.

{¶13} The judgment of the trial court is vacated and reversed, and the matter is remanded for resentencing, pursuant to *State v. Foster*.⁸

DONALD R. FORD, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.

8. Id.