

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

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2006-L-232
COREY S. KRAL,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas, Case No. 05 CR 000471.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Craig A. Swenson*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

R. Paul LaPlante, Lake County Public Defender, and *Vanessa R. Clapp*, Assistant Public Defender, 125 East Erie Street, Painesville, OH 44077 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Corey S. Kral, appeals the Judgment Entry of Sentence rendered by the Lake County Court of Common Pleas, sentencing him to serve a prison term of six years for crimes more fully described below. For the reasons that follow, we affirm the decision of the court below on the authority of *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856.

{¶2} On August 30, 2005, Kral was indicted on two counts of Burglary, felonies of the second degree, in violation of R.C. 2911.12(A)(2); one count of Burglary, a felony of the second degree, in violation of R.C. 2911.12(A)(2), with a Firearm Specification pursuant to R.C. 2941.141; one count of Grand Theft, a felony of the third degree in violation of R.C. 2913.02(A)(1), with a Firearm Specification pursuant to R.C. 2941.141; and one count of Possessing Criminal Tools, a felony of the fifth degree in violation of R.C. 2923.24.

{¶3} On December 2, 2005, Kral entered pleas of guilty to the three Burglary counts of the indictment, including the Firearm Specification.

{¶4} On January 12, 2006, the trial court sentenced Kral to serve concurrent five year prison terms for each count of Burglary and an additional, mandatory one year prison term, prior to and consecutive to the Burglary sentences, for the Firearm Specification for an aggregate sentence of six years. The trial court further ordered Kral to pay restitution to the victims of the burglaries and imposed three years of post release control.

{¶5} Kral appealed his sentences to this court, on the grounds that the sentences were unconstitutional under *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856.

{¶6} In *State v. Kral*, 11th Dist. No. 2006-L-018, 2006-Ohio-3884, this court reversed Kral's sentence and remanded his case for resentencing. *Id.* at ¶8.

{¶7} On September 26, 2006, the trial court again ordered Kral to serve an aggregate six year prison term as described above.

{¶8} Kral timely appeals and raises the following assignments of error:

{¶9} "[1.] The trial court erred when it sentenced the defendant-appellant to more-than-the-minimum prison terms in violation of the due process and ex post facto clauses of the Ohio and United States Constitutions.

{¶10} "[2.] The trial court erred when it sentenced the defendant-appellant to more-than-the-minimum prison terms in violation of defendant-appellant's right to due process.

{¶11} "[3.] The trial court erred when it sentenced the defendant to a more-than-the-minimum prison terms based on the Ohio Supreme Court's severance of the offending provisions under *Foster*, which was an act in violation of the principle of separation of powers.

{¶12} "[4.] The trial court erred when it sentenced the defendant-appellant to a more-than-the-minimum prison terms contrary to the rule of lenity.

{¶13} "[5.] The trial court erred when it sentenced the defendant-appellant to a more-than-the-minimum prison terms contrary to the intent of the Ohio Legislators."

{¶14} Kral's arguments have been previously raised and rejected by numerous decisions of this court. *State v. Bengal*, 11th Dist. No. 2006-L-123, 2007-Ohio-2691; *State v. Filchock*, 11th Dist. No. 2006-L-122, 2007-Ohio-2574; *State v. Marino*, 11th Dist. No. 2006-L-192, 2007-Ohio-2566; *State v. Green*, 11th Dist. Nos. 2005-A-0069 and 2005-A-0070, 2006-Ohio-6695.

{¶15} Kral's arguments have also been consistently rejected by other Ohio appellate districts and federal courts. See *State v. Gibson*, 10th Dist. No. 06AP-509, 2006-Ohio-6899; *State v. Moore*, 3rd Dist. No. 1-06-51, 2006-Ohio-6860; *United States*

v. Portillo-Quezada (C.A.10 2006), 469 F.3d 1345, 1354-1356, and the cases cited therein.

{¶16} Based on the authority of these and other cases, Kral's assignments of error are without merit. The judgment of the Lake County Court of Common Pleas, sentencing Kral to an aggregate prison term of six years, is affirmed.

CYNTHIA WESTCOTT RICE, P.J.,

MARY JANE TRAPP, J.,

concur.