

[Cite as *State v. Serafino*, 2006-Ohio-3993.]

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. Julie A. Edwards, J.
-vs-	:	
	:	Case No. 05-COA-061
CHARLES P. SERAFINO	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Case No. 04-CRI-007

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: August 3, 2006

APPEARANCES:

For Plaintiff-Appellee

PAUL T. LANGE
307 Orange Street
Ashland, OH 44805

For Defendant-Appellant

DOUGLAS A. MILHOAN
601 South Main Street
North Canton, OH 44720

Farmer, J.

{¶1} By judgment entry filed November 14, 2005, appellant, Charles Serafino, was sentenced to an aggregate term of twenty months in prison after pleading guilty to one count of receiving stolen property in violation of R.C. 2913.51 and one count of theft in violation of R.C. 2913.02.

{¶2} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

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{¶3} "THE IMPOSITION OF A PRISON SENTENCE IN THIS CASE WAS UNCONSTITUTIONAL AS IT WAS BASED ON AN UNCONSTITUTIONAL STATUTE."

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{¶4} Appellant claims the trial court erred in sentencing him. We agree.

{¶5} Specifically, appellant claims the trial court sentenced him under unconstitutional statutes based upon the Supreme Court of Ohio's opinion in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, wherein the *Foster* court held R.C. 2929.14(B) and (C), R.C. 2929.19(B)(2), R.C. 2929.14(E)(4) and R.C. 2929.41(A), requiring "judicial factfinding before imposition of a sentence greater than the maximum term authorized by a jury verdict or admission of the defendant" and/or consecutive sentences, are unconstitutional. *Id.* at ¶83. The *Foster* court severed the statutes, and concluded "****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." *Id.* at ¶100.

{¶6} In addition, the state concedes this issue in its brief at 2.

{¶7} In accordance with the directives of the *Foster* court, we grant the assignment of error and vacate the sentences herein. The matter is remanded to the trial court for resentencing pursuant to *Foster*.

{¶8} The sole assignment of error is granted.

{¶9} The judgment of the Court of Common Pleas of Ashland County, Ohio is hereby reversed and remanded.

By Farmer, J.

Gwin, P.J. and

Edwards, J. concur.

JUDGES

