

[Cite as *State v. Britton*, 2006-Ohio-4672.]

COURT OF APPEALS  
DELAWARE COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

DONOVAN L. BRITTON

Defendant-Appellant

JUDGES:

Hon. John W. Wise, P.J.  
Hon. William B. Hoffman, J.  
Hon. Sheila G. Farmer, J.

Case No. 06CAA03021

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Delaware County Court of  
Common Pleas, Case No. 05CRI08390.

JUDGMENT:

Vacated and Remanded

DATE OF JUDGMENT ENTRY:

September 8, 2006

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

DAVID YOST  
Delaware County Prosecutor  
140 North Sandusky Street  
Delaware, Ohio 43015

SHAWN R. DOMINY  
500 West Wilson Bridge Road  
Suite 110  
Worthington, Ohio 43085

*Hoffman, J.*

{¶1} Defendant-appellant Donovan L. Britton appeals his sentence entered by the Delaware County Court of Common Pleas following his pleas of guilty to one count of forgery and one count of theft. The State of Ohio is plaintiff-appellee.

#### STATEMENT OF THE CASE<sup>1</sup>

{¶2} Appellant pled guilty to the aforementioned charges on January 6, 2002. Both charges are fifth degree felonies. Via Judgment Entry of Sentence filed February 17, 2006, the trial court sentenced appellant to eleven months in prison on the forgery count and seven months in prison on the theft count. The trial court ordered the prison sentences run consecutively. It is from that Judgment Entry appellant prosecutes this appeal assigning as error:

{¶3} "I. THE DEFENDANT'S CONSTITUTIONAL RIGHTS WERE VIOLATED BECAUSE THE SENTENCING STATUTES UNDER WHICH THE DEFENDANT WAS SENTENCED TO NON-MINIMUM CONSECUTIVE PRISON TERMS WERE UNCONSTITUTIONAL.

{¶4} Subsequent to the trial court entering its sentence in this case, the Ohio Supreme Court issued its decision in *State v. Foster* (2006), 109 Ohio St.3d 1. Pursuant to *Foster*, we sustain appellant's sole assignment of error.<sup>2</sup>

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<sup>1</sup> A Statement of the Facts is unnecessary for resolution of this appeal.

<sup>2</sup> In its brief to this Court, appellee concedes vacation of sentence and remand for resentencing is the appropriate disposition of this appeal.

{15} The appellant's sentence is vacated and the matter remanded to the trial court for resentencing.

By: Hoffman, J.

Wise, P.J. and

Farmer, J. concur

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HON. WILLIAM B. HOFFMAN

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HON. JOHN W. WISE

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HON. SHEILA G. FARMER

