

COURT OF APPEALS  
LICKING COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Sheila G. Farmer, J.
-vs-	:	
	:	Case No. 06CA49
JASON KLAIR	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,  
Case No. 06CR00002

JUDGMENT: Sentence Vacated and Remanded

DATE OF JUDGMENT ENTRY: October 19, 2006

APPEARANCES:

For Plaintiff-Appellee

DAVID W. MALLETT  
20 South Second Street  
4<sup>th</sup> Floor  
Newark, OH 43055

For Defendant-Appellant

ANDREW T. SANDERSON  
21 West Church Street  
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*Farmer, J.*

{¶1} On January 9, 2006, the Licking County Grand Jury indicted appellant, Jason Klair, on one count of receiving stolen property in the fifth degree in violation of R.C. 2913.51 and one count of burglary in the second degree in violation of R.C. 2911.12. On April 10, 2006, appellant pled no contest to the charges. By judgment entry filed April 11, 2006, the trial court found appellant guilty and sentenced him to nine months on the receiving stolen property count and four years on the burglary count. The trial court ordered the sentences to be served "consecutively with each other and to any other case from Morrow, Franklin or Delaware County."

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

I

{¶3} "THE SENTENCING OF THE DEFENDANT-APPELLANT PURSUANT TO THE OHIO REVISED CODE WAS UNCONSTITUTIONAL AND AN ABUSE OF DISCRETION."

I

{¶4} Appellant claims his sentence was unconstitutional. Specifically, appellant argues two points: 1) his sentence was unlawful because it was ordered to be served consecutively with a misdemeanor sentence from Morrow County; and 2) his sentence is subject to remand pursuant to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. We agree.

{¶5} In its brief at 4, the state concedes both issues. Therefore, appellant's sentence is vacated and the matter is remanded for resentencing pursuant to *Foster*.

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

{¶7} The sentence of the Court of Common Pleas of Licking County, Ohio is vacated and the matter is remanded to said court for resentencing.

By Farmer, J.

Gwin, P.J. and

Hoffman, J. concur.

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JUDGES

SGF/sg 1005

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
JASON KLAIR	:	
	:	
Defendant-Appellant	:	CASE NO. 06CA49

For the reasons stated in our accompanying Memorandum-Opinion, the sentence of the Court of Common Pleas of Licking County, Ohio is vacated and the matter is remanded to said court for resentencing pursuant to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. Costs to appellee.

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JUDGES