

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. John F. Boggins, J.
-vs-	:	
	:	
RONALD TRUSSELL	:	Case No. CT2005-0058
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Case No. CR2005-0027

JUDGMENT: Sentence Vacated/Remanded

DATE OF JUDGMENT ENTRY: October 30, 2006

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Farmer, J.

{¶1} On January 27, 2005, the Muskingum County Grand Jury indicted appellant, Ronald Trussell, on two counts of rape in violation of R.C. 2907.02, two counts of gross sexual imposition in violation of R.C. 2907.05 and two counts of disseminating matter harmful to juveniles in violation of R.C. 2907.31.

{¶2} On March 16, 2005, appellant pled guilty to one count on each charge. The remaining three counts were dismissed. By entry filed April 22, 2005, the trial court sentenced appellant to an aggregate term of ten years in prison.

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

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{¶4} "THE COURT ERRED BY IMPOSING A MAXIMUM TERM FOR RAPE UNDER AN UNCONSTITUTIONAL SENTENCING SCHEME."

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

{¶6} 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.

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

{¶8} 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*.

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

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

By Farmer, J.

Hoffman, P.J. and

Boggins, J. concur.

JUDGES

