

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

State of Ohio, :
 :
 Plaintiff-Appellee, : Case No. 06CA35
 :
 v. :
 :
 Roger L. Ward, Jr., : MEMORANDUM OPINION
 :
 Defendant-Appellant. :
 :
 Released 3/28/07

APPEARANCES:

David H. Bodiker, State Public Defender, and Brooke M. Burns, Assistant State Public Defender, Columbus, Ohio, for Appellant.

James Schneider, Washington County Prosecuting Attorney, and Alison L. Cauthorn, Washington County Assistant Prosecuting Attorney, Marietta, Ohio, for Appellee.

Harsha, J.

{¶1} Roger L. Ward, Jr., pled guilty to one count of burglary, a third degree felony. After his original sentence was reversed, he appeals the trial court's imposition of a five-year prison sentence upon remand. Ward contends that the Ohio Supreme Court's decision in *State v. Foster* (2006), 109 Ohio St.3d 1, 845 N.E.2d 470, violates the ex post facto clause of the United States Constitution because it permits the trial court to impose an enlarged sentence beyond that it could have imposed at the time he committed the crime. We have already decided that issue in *State v. Grimes* (Nov. 24, 2006), Washington App. No. 04CA17, 2006-Ohio-6360 and see no reason to vary from it here. Thus, we conclude that the Supreme Court's decision in *Foster* does not violate the ex post

facto clause because the range of prison terms for a third degree felony are the same both before and after *Foster*. See *Grimes* for a more detailed analysis.

JUDGMENT AFFIRMED.

McFarland, P.J. & Abele, J.: Concur in Judgment and Opinion.

FOR THE COURT

William H. Harsha, Judge