

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-05-1147

Appellee

Trial Court No. CR-2004-1660

v.

Eliezer Albelo

DECISION AND JUDGMENT ENTRY

Appellant

Decided: March 17, 2006

* * * * *

Julia R. Bates, Prosecuting Attorney, and Bruce J. Sorg,
Assistant Prosecuting Attorney, for appellee.

Veronica M. Murphy, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶1} Defendant-appellant, Eliezer Albelo, appeals the September 17, 2004 judgment entry of the Lucas County Court of Common Pleas which, following a plea of guilty

pursuant to *North Carolina v. Alford* (1970), 400 U.S. 25, sentenced appellant to four years of imprisonment for possession of cocaine in violation of R.C. 2925.11(A) and (C)(4)(d). Appellant raises the following assignment of error:

{¶2} "The trial court's sentence was contrary to law and violated appellant's Sixth and Fourteenth Amendment rights under the United States Constitution."

{¶3} Upon review, we find that this case is controlled by the Supreme Court of Ohio's decision in *State v. Foster*, ___ Ohio St.3d. ___, 2006-Ohio-856. In *Foster*, the court held that R.C. 2929.14(B) violates the Sixth Amendment to the United States Constitution, pursuant to *Blakely v. Washington* (2004), 542 U.S. 296, and *Apprendi v. New Jersey* (2000), 530 U.S. 466. Because the trial court relied on an unconstitutional statute when sentencing appellant, we find that the sentence is void and must be vacated. *Foster* at ¶ 103-104. Accordingly, appellant's sole assignment of error is found well-taken.

{¶4} On consideration whereof, we find that the judgment of the Lucas County Court of Common Pleas is reversed and appellant's sentence is vacated. The matter is remanded to the trial court for a new sentencing hearing in accordance with *Foster*, supra. The state is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Lucas County.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Dennis M. Parish, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.