

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

State of Ohio

Court of Appeals No. L-05-1193

Appellee

Trial Court No. CR-00-2377

v.

Sean Machaterre

**DECISION AND JUDGMENT ENTRY**

Appellant

Decided: March 17, 2006

\* \* \* \* \*

Julia R. Bates, Prosecuting Attorney, and Thomas A. Matuzak,  
Assistant Prosecuting Attorney, for appellee.

Sean Machaterre, pro se.

\* \* \* \* \*

SINGER, P.J.

{¶1} This is an accelerated appeal. Appellant, Sean Machaterre, pro se incarcerated appeals the Lucas County Court of Common Pleas' decision to deny appellant's motion to correct or vacate his sentence.

{¶2} On December 20, 2000, appellant pled no contest to possession of crack cocaine in violation of R.C. 2925.11(A), a first degree felony. The trial court found that appellant committed the worst form of the offense and was a major drug offender. The

court sentenced him to a term of ten years incarceration, pursuant to R.C. 2929.14(D)(3)(b).

{¶3} In a single assignment of error, appellant asserts that the trial court violated his Sixth Amendment right to a jury, by engaging in improper factfinding and, consequently, sentenced him to ten years incarceration rather than the statutory minimum three years incarceration for an individual who has not previously served a prison term, as prescribed by R.C. 2929.14(B)(1).

{¶4} Appellant's assignment of error is well-taken. The Ohio Supreme Court in *State v. Foster*, \_\_\_\_\_ Ohio St.3d. \_\_\_\_\_, 2006-Ohio-856, at ¶80, has found that R.C. 2929.14(D)(3)(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, and thus is unconstitutional. This case, therefore, is controlled by *Foster*. The sentence imposed by the trial court is unconstitutional and, consequently, void.

{¶5} On consideration whereof, appellant's sentence is vacated and this matter is, hereby, remanded to the trial court for resentencing, pursuant to *Foster*. 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

Arlene Singer, P.J.

\_\_\_\_\_  
JUDGE

William J. Skow, 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>.