

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

State of Ohio

Court of Appeals No. S-05-019

Appellee

Trial Court No. 01-CR-659

v.

Jeffery T. Green

DECISION AND JUDGMENT ENTRY

Appellant

Decided: March 31, 2006

* * * * *

Thomas L. Stierwalt, Sandusky County Prosecuting Attorney,
and Norman P. Solze, Assistant Prosecuting Attorney, for appellee.

Kenneth J. Rexford, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal from a judgment of the Sandusky County Court of Common Pleas which sentenced defendant-appellant, Jeffrey Green, to seven years in prison after Green pled guilty to one count of involuntary manslaughter, a first degree felony. Green now challenges that sentence through the following assignments of error:

{¶ 2} "I. The trial court erred in sentencing the defendant by not imposing a minimum sentence, in violation of R.C. §2929.14(B).

{¶ 3} "II. Sentencing in this case violated the *Apprendi* doctrine as explained in *Blakely v. Washington* and was therefore unconstitutional."

{¶ 4} 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*, supra at ¶ 103-104. Accordingly, appellant's second assignment of error is well-taken and appellant's first assignment of error is moot.

{¶ 5} On consideration whereof, this court finds that the Sandusky County Court of Common Pleas erred in sentencing appellant and the judgment is reversed. The sentence is hereby vacated and the case is remanded to the trial court for resentencing in accordance with *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 Sandusky County.

JUDGMENT REVERSED.

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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

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>.