

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

State of Ohio

Court of Appeals No. L-05-1101

Appellee

Trial Court No. CR-2004-2545

v.

William T. Jones

DECISION AND JUDGMENT ENTRY

Appellant

Decided: June 6, 2006

* * * * *

Deborah Kovac Rump, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶1} This matter is before the court on the motion of defendant-appellant,
William T. Jones, for reconsideration of our May 12, 2006 decision and judgment entry.

{¶2} As stated in *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, 140:

{¶3} "The test generally applied upon the filing of a motion for reconsideration in the court of appeals is whether the motion calls to the attention of the court an obvious error in its decision or raises an issue for consideration that was either not considered at all or not fully considered by the court when it should have been."

{¶4} Appellant urges this court to reconsider its finding that, relative to appellant's fifth assignment of error, the sentence imposed by the trial court did not violate *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. Specifically, appellant contends that the trial court, in sentencing appellant to more than the statutory minimum, made statutory findings that the *Foster* court determined were unconstitutional.

{¶5} Upon review of our analysis of appellant's fifth assignment of error we find that, in accordance with *Matthews*, appellant has brought to the attention of the court "an obvious error in its decision" and, thus, grant appellant's motion for reconsideration.

{¶6} Upon reconsideration and review of the March 3, 2005 sentencing transcript we must agree that the trial court's statement that appellant "presents a real danger to society and a lengthy prison term is necessary to protect the public" is a finding under R.C. 2929.14(B)(2) which has been severed by the Ohio Supreme Court in *Foster*.

{¶7} Accordingly, we find that appellant's motion for reconsideration is well-taken and, we find his fifth assignment of error is well-taken. Our decision dated May 12, 2006, is reversed, in part. We reverse our finding that, relative to appellant's fifth

assignment of error, appellant's sentence was not contrary to law. The matter is remanded to the trial court for resentencing in accordance with this decision. It is so ordered. Pursuant to App.R. 24, costs assessed against appellee.

MOTION GRANTED.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, P.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>.