

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

State of Ohio

Appellee

v.

Allan J. Bonaminio

Appellant

Court of Appeals Nos. L-09-1171

L-09-1172

L-09-1173

Trial Court Nos. CR0200303389

CR0200303206

CR0200303190

DECISION AND JUDGMENT

Decided: March 12, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Frank H. Spryszak, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This case is before the court from the judgment of the Lucas County Court of Common Pleas which originally sentenced appellant, Allen Bonaminio, on March 2, 2004, with respect to his convictions for aggravated robbery, with a firearm specification,

in violation of R.C. 2911.01(A)(1) and 2941.141, a felony of the first degree, and aggravated robbery, a violation of R.C. 2911.01(A)(1), a felony of the first degree. The trial court later entered a nunc pro tunc judgment entry on May 27, 2009, in order to comply with Crim.R. 32(C), *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, and *State ex rel. Culgan v. Medina Cty. Court of Common Pleas*, 119 Ohio St.3d 535, 2008-Ohio-4609.

{¶ 2} On appeal, relying on *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, appellant raises the following sole assignment of error:

{¶ 3} "The trial court violated appellant's Sixth Amendment rights when it made findings of fact while sentencing appellant to consecutive sentences."

{¶ 4} *Foster* only applies to cases that were pending before the appellate court on "direct review" at the time of *Foster's* release on February 27, 2006. *State v. Silsby*, 119 Ohio St.3d 370, 2008-Ohio-3834, ¶ 18. A direct appeal from appellant's 2004 convictions was not pending before this court at the time of *Foster's* release. As such, appellant is not entitled to be resentenced pursuant to *Foster*. Appellant's sole assignment of error, therefore, is found not well-taken.

{¶ 5} On consideration whereof, this court finds that the trial court did not abuse its discretion in sentencing appellant and the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

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

Peter M. Handwork, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Keila D. Cosme, 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>.