

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2005-10-457
 :
 -vs- : OPINION
 : 8/7/2006
 :
 ROBERT W. BANKS, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR04-10-1875

Robin N. Piper, Butler County Prosecuting Attorney, Daniel G. Eichel, Government Services Center, 315 High Street, 11th Floor, Hamilton, OH 45011-6057, for plaintiff-appellee

Christopher M. Alexander Company, LPA, Christopher M. Alexander, 5770 Gateway Boulevard, Suite 101, Mason, OH 45040, for defendant-appellant

YOUNG, J.

{¶1} Defendant-appellant, Robert W. Banks, pled guilty to one count of burglary, a second-degree felony under R.C. 2911.12(A)(1), and received a nonminimum sentence of four years in prison.

{¶2} On appeal, appellant presents two assignments of error for review:

{¶3} First assignment of error:

{¶4} "THE TRIAL COURT ERRED AS A MATTER OF LAW BY IMPROPERLY SENTENCING APPELLANT."

{¶5} Second assignment of error:

{¶6} "THE TRIAL COURT ERRED AS A MATTER OF LAW BY IMPOSING MORE THAN THE MINIMUM SENTENCE WITHOUT SPECIFICALLY FINDING THE FACTORS SET FORTH IN R.C. 2929.14(B)."

{¶7} Appellant claims the trial court erred by imposing more than the minimum sentence for a second-degree felony. The Ohio Supreme Court recently found several portions of Ohio's statutory sentencing scheme unconstitutional and severed them from Ohio's sentencing code. See *State v. Foster*, 109 Ohio St.3d, 2006-Ohio-856. Among those unconstitutional sections was R.C. 2929.14(B), which requires certain judicial findings before the imposition of more than a minimum prison term. See *Foster* at paragraph one of the syllabus. As a result of the severance of this provision from Ohio's felony sentencing scheme, judicial fact-finding prior to the imposition of a sentence within the basic range of R.C. 2929.14(A) is no longer required. *Id.* at paragraph two of the syllabus. See, also, *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, paragraph three of the syllabus.

{¶8} In this case, the trial court made findings under R.C. 2929.14(B) to impose more than the minimum prison term for a second-degree felony.

{¶9} The *Foster* court instructed that all cases pending on direct review in which the unconstitutional sentencing provisions were utilized must be remanded for resentencing. See *Foster* at ¶104. Accordingly, appellant's first assignment of error is

sustained. On remand, the trial court will have full discretion to impose a sentence within the statutory range and is no longer required to make findings or give reasons for imposing more than the minimum sentence.

{¶10} Given our disposition of the first assignment of error, appellant's second assignment of error is rendered moot.

{¶11} The judgment of the trial court is reversed as to sentencing only and the case is remanded for resentencing.

POWELL, P.J., and WALSH, J., concur.

[Cite as *State v. Banks*, 2006-Ohio-4045.]