

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

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2006-02-039
 :
 - vs - : OPINION
 : 9/25/2006
 :
 IAN MICHAEL LEWIS, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2005-07-1211

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

Brian K. Harrison, 240 East State Street, Trenton, Ohio 45067, for defendant-appellant

WALSH, J.

{¶1} Defendant-appellant, Ian Michael Lewis, pled guilty to a second-degree felony charge of robbery in violation of R.C. 2911.02(A)(1). The trial court, citing R.C. 2929.14(B), sentenced appellant to a five-year prison term.

{¶2} Appellant presents one assignment of error which claims that the trial court erred by imposing a prison term that exceeded the minimum term for a second-degree felony.

{¶3} In *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, the Ohio Supreme Court held that portions of Ohio's statutory sentencing scheme were unconstitutional. Among the statutes found unconstitutional was R.C. 2929.14(B) and 2929.19(B)(2), concerning the imposition of a nonminimum prison term. *Id.* at ¶83, 97-99. The *Foster* court severed these sections from the sentencing code and instructed that all cases pending on direct review in which the unconstitutional sentencing provisions were utilized must be remanded for resentencing. *Id.* at ¶104. Because the trial court utilized R.C. 2929.14(B) to impose a nonminimum prison term, we must remand this case for resentencing consistent with *Foster*.

{¶4} Appellant's sole assignment of error is sustained.

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

POWELL, P.J., and BRESSLER, J., concur.