

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

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, : CASE NO. CA2006-02-025  
 :  
 - vs - : OPINION  
 : 10/2/2006  
 :  
 GEORGE ASBERRY RUSSELL, :  
 :  
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS  
Case No. CR2005-06-1096

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

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

**POWELL, P.J.**

{¶1} Defendant-appellant, George Asberry Russell, was convicted on one count of domestic violence, a third-degree felony, in violation of R.C. 2919.25(A), following a jury trial. The trial court, citing R.C. 2929.14(B), sentenced appellant to a two-year prison term. Appellant appeals, presenting one assignment of error that claims the trial court erred by imposing a nonminimum prison term.

{¶2} 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 are unconstitutional. Among the

statutes found unconstitutional were R.C. 2929.14(B) and 2929.19(B)(2), concerning the imposition of more than a minimum 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 sentence, we must remand this case for resentencing consistent with *Foster*.

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

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

WALSH and BRESSLER, JJ., concur.

[Cite as *State v. Russell*, 2006-Ohio-5193.]