

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

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, : CASE NO. CA2006-02-007  
 :  
 - vs - : OPINION  
 : 10/16/2006  
 :  
 BRYAN K. TAYLOR, :  
 :  
 Defendant-Appellant. :

CRIMINAL APPEAL FROM MADISON COUNTY COURT OF COMMON PLEAS  
Case No. 2005CR-11-111

Stephen J. Pronai, Madison County Prosecuting Attorney, Eamon P. Costello, 23 West High Street, London, OH 43140, for plaintiff-appellee

Shannon M. Treynor, 63 North Main Street, P.O. Box 735, London, OH 43140, for defendant-appellant

**POWELL, P.J.**

{¶1} Defendant-appellant, Bryan K. Taylor, pled guilty to one third-degree felony charge of theft of anhydrous ammonia in violation of R.C. 2913.02(A)(1), and one count of breaking and entering, a fifth-degree felony, in violation of R.C. 2911.13(B). The trial court, after making findings pursuant to R.C. 2929.14(B) and (C), imposed maximum concurrent prison terms on each count.

{¶2} Appellant presents one assignment of error which claims that the trial court erred by sentencing appellant to maximum prison terms.

{¶3} In *State v. Foster*, 109 Ohio St.3d, 2006-Ohio-856, the Ohio Supreme Court held that portions of Ohio's statutory sentencing scheme were unconstitutional. Among those statutes found unconstitutional was R.C. 2929.14(C), concerning the imposition of a maximum prison term. *Id.* at ¶¶83, 97-99. The *Foster* court severed this section 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(C) to impose maximum prison terms, 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 for resentencing.

YOUNG and BRESSLER, JJ., concur.

[Cite as *State v. Taylor*, 2006-Ohio-5382.]