

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

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2006-02-037
 :
 - vs - : OPINION
 : 11/13/2006
 :
 JEFF MICHAEL RILEY, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2005-07-1316

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

Repper, Powers & Pagan, Ltd., Melynda W. Cook-Reich, 1501 First Avenue, Middletown, Ohio 45044, for defendant-appellant

BRESSLER, J.

{¶1} Defendant-appellant, Jeff Michael Riley, pled guilty to one fourth-degree felony charge of domestic violence in violation of R.C. 2929.25(A), and one fourth-degree felony charge of aggravated assault in violation of R.C. 2903.12. The trial court, citing R.C. 2929.14(C), sentenced appellant to maximum 18-month prison sentences on each count to be served concurrently.

{¶2} Appellant presents one assignment of error which claims the trial court erred by

imposing a maximum prison term.

{¶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. Those statutes found unconstitutional included R.C. 2929.14(C), concerning the imposition of a maximum 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 relied on R.C. 2929.14(C) to impose a maximum 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 for resentencing.

WALSH, P.J., and YOUNG, J., concur.

[Cite as *State v. Riley*, 2006-Ohio-5988.]