

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

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2006-02-036
 :
 - vs - : OPINION
 : 12/11/2006
 :
 TIMOTHY P. BARRETT, SR., :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2005-06-1053

Robin N. Piper, Butler County Prosecuting Attorney, Michael A. Oster, Jr., 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

WALSH, P.J.

{¶1} Defendant-appellant, Timothy P. Barrett, Sr., pled guilty to a fifth-degree felony charge of theft in violation of R.C. 2913.02(A)(3). The trial court sentenced appellant to three years of community control with several conditions and advised appellant that a violation of the conditions would result in the imposition of a 12-month jail sentence.

{¶2} Appellant subsequently violated his community control conditions and the trial court, citing R.C. 2929.14(C), sentenced appellant to a maximum 12-month prison term.

{¶3} Appellant presents one assignment of error which claims that the trial court erred when it sentenced him to a maximum term of imprisonment.

{¶4} 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(C), governing the imposition of a maximum term of imprisonment. *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(C) to impose a maximum prison term, we must remand this case for resentencing consistent with *Foster*.

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

{¶6} 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. Barrett*, 2006-Ohio-6543.]