

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-050375
	:	TRIAL NO. B-0404724
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
RODNEY FRENCH,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Rodney French was found guilty of eight counts of felonious assault with firearm specifications. After merging various counts, on April 7, 2005, the trial court sentenced French to seven years' incarceration on each of four counts of felonious assault and to three years' incarceration on the accompanying firearm specifications, for an aggregate sentence of 40 years. On appeal, we held that the trial court had erred in imposing more than one mandatory three-year term for the firearm specifications. We vacated the sentences imposed for the firearm specifications and remanded the case for resentencing on the specifications.

On March 27, 2007, French filed an App.R. 26(B)(5) motion to reopen his appeal on the basis that his appellate counsel had been ineffective in failing to assert on appeal that the trial court, in sentencing French to nonminimum and consecutive terms, had

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

engaged in judicial factfinding held unconstitutional in *State v. Foster*.² We granted French's motion and appointed new appellate counsel on May 8, 2007. French's new appellate counsel and the state filed briefs asserting that French's entire sentence had to be vacated and the case remanded for resentencing under *Foster*.

On March 30, 2007, pursuant to our initial remand, the trial court held a resentencing hearing. Even though we had remanded the case solely for resentencing on the firearm specifications, the trial court concluded, with the agreement of defense counsel and the prosecutor, that it was required to resentence French "on everything." The court proceeded to hold a new sentencing hearing. The court allowed defense counsel to speak in mitigation. The court also asked French if he wanted to make any statements on his own behalf. French specifically asked the court whether he was being resentenced solely on the firearm specifications. The court informed French that he was being resentenced on all counts, but that he would still receive credit for time served. The court then imposed a sentence of seven years' incarceration on each of four felonious-assault counts and to three years' incarceration on the sole firearm specification, for an aggregate sentence of 31 years. In imposing the sentence, the court did not engage in any judicial factfinding held unconstitutional in *Foster*. French appealed his sentences in the appeal numbered C-070235, alleging that his sentences were contrary to law because they were excessive. That appeal is pending in this court.

We have allowed French to reopen his appeal in this case on the basis that appellate counsel was ineffective in failing to challenge French's original sentence under *State v. Foster*. The relief sought by French, which the state has not challenged, is a remand for resentencing in accordance with *Foster*. But in resentencing French on all

² 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

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counts, the trial court has, in essence, already provided French with the relief he requests in this appeal. Therefore, the appeal is dismissed as moot. We point out that the merits of French's challenge to his new sentence will be addressed in the appeal numbered C-070235.

A certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App. R. 27. Costs shall be taxed under App.R. 24.

PAINTER, P.J., HENDON and WINKLER, JJ.

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

To the Clerk:

Enter upon the Journal of the Court on October 17, 2007
per order of the Court _____.
Presiding Judge