

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

STATE OF OHIO,	:	APPEAL NO. C-060892
	:	TRIAL NO. B-018750(B)
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
DARRIN STAFFORD,	:	
	:	
Defendant-Appellant.	:	

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

Darrin Stafford, a paraplegic, killed one person and injured several others when he drove a vehicle that was not adapted for paraplegic drivers into a crowd of people walking to a Cincinnati Bengals' game. Stafford is appealing only his sentence, so the underlying facts are not relevant.

Stafford was convicted of one count of aggravated vehicular homicide² and three counts of vehicular assault.³ He was sentenced to 20 years in prison.

In an earlier appeal, this court reversed his sentence and remanded the case for re-sentencing. Stafford was then sentenced by a different judge to 19 years in prison.

Stafford appealed again, arguing that his sentence was unconstitutional because the trial court had made findings that should have been made by a jury, in violation of his

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

² R.C. 2903.06.

³ R.C. 2903.08(A)(2).

right to a jury trial. While his case was pending, the Ohio Supreme Court decided *State v. Foster*.⁴ This court sustained his appeal and remanded his case for resentencing. The trial court again sentenced Stafford to 19 years in prison.

Stafford now appeals for a third time. He asserts four assignments of error: (1) *Foster* should not have been applied retroactively; (2) the trial court's imposition of court costs violated his due-process and equal-protection rights; (3) his sentence was disproportionately severe; and (4) *Foster* is unconstitutional. Assignments one, three, and four all concern *Foster*, so we will discuss them together.

The United States Supreme Court has determined that the right to a jury trial requires that the state prove to the jury any fact (other than a prior conviction) that increases the penalty for a crime beyond the maximum sentence, which is the longest sentence that a court may impose based on facts admitted by the defendant or reflected in the jury's verdict.⁵

The Ohio Supreme Court interpreted these holdings in *Foster*. In that case, the court held that trial courts need not make findings to justify sentences. Instead, trial courts have full discretion to impose any sentence within the statutory guidelines without any explanation or further findings.⁶ Ohio appellate courts have determined that *Foster* may be applied retroactively.⁷

The trial court did not err by sentencing Stafford to 19 years in prison. *Foster* allows a trial court to impose any sentence within the statutory guidelines without

⁴ *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

⁵ See *Apprendi v. New Jersey* (2000), 530 U.S. 466, 120 S.Ct. 2348; *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531; *United States v. Booker* (2005), 543 U.S. 220, 125 S.Ct. 738.

⁶ *Foster*, supra, ¶100.

⁷ See *State v. Royles*, 1st Dist. Nos. C-060875 and C-060876, 2007-Ohio-5348, ¶¶6-7; *State v. Rhoads*, 3rd Dist. No. 5-07-10, 2007-Ohio-5386, ¶3; *State v. Distasio*, 8th Dist. No. 88983, 2007-Ohio-5454, ¶8.

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providing any findings or explanation. Stafford's sentence was within the guidelines. Stafford's first, third, and fourth assignments of error are overruled.

In his second assignment of error, Stafford argues that the trial court violated his due-process and equal-protection rights by imposing court costs notwithstanding his indigency. R.C. 2947.23 states, "In all criminal cases, including violations of ordinances, the judge or magistrate shall include in the sentence the costs of prosecution and render a judgment against the defendant for such costs." The trial court was required to impose courts costs upon Stafford. We note that costs are a civil penalty, and a defendant cannot be imprisoned for failure to pay.⁸ We overrule this assignment of error.

Therefore, the judgment of the trial court is affirmed.

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., HILDEBRANDT and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 7, 2007
per order of the Court _____
Presiding Judge

⁸ See *State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905, 843 N.E.2d 164, at ¶16; *State v. Estes*, 12th Dist. No. CA2002-05-008, 2003-Ohio-5283, at ¶17.