

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

STATE OF OHIO,	:	APPEAL NOS. C-061017
		C-061018
Plaintiff-Appellee,	:	TRIAL NOS. B0401019
		B0404180
vs.	:	
		<i>JUDGMENT ENTRY.</i>
OLUWOLE OKUWA,	:	
Defendant-Appellant.	:	

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

Oluwole Okuwa was indicted for three counts of theft,² six counts of identity fraud,³ three counts of receiving stolen property,⁴ one count of engaging in a pattern of corrupt activity,⁵ and one count of possessing criminal tools.⁶ Okuwa pleaded guilty to some of the charges and the state dismissed the rest. The trial court sentenced Okuwa to ten years in prison and noted that, upon release, he would be subject to post-release control. Okuwa appealed his convictions and sentences. This court affirmed the findings of guilt, but remanded the case to the trial court for resentencing in light of *State v. Foster*.⁷ On remand, the trial court again sentenced Okuwa to ten years in prison and three years of post-release control.

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

² R.C. 2913.02(A)(1).

³ R.C. 2913.49(B)(1).

⁴ R.C. 2913.51(A).

⁵ R.C. 2923.32(A)(1).

⁶ R.C. 2923.24(A).

⁷ *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d. 470.

Okuwa has again appealed, asserting two assignments of error: that the trial court erred (1) by sentencing him to a greater than minimum term of imprisonment in violation of the ex post facto and due-process clauses, and (2) by imposing post-release control in violation of the separation-of-powers doctrine.

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.⁸

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.⁹ Ohio appellate courts have determined that *Foster* may be applied retroactively.¹⁰

The trial court did not err by sentencing Okuwa to ten years in prison. *Foster* allows a trial court to impose any sentence within the statutory guidelines without any findings or explanation. Okuwa's sentence was within the guidelines.

Okuwa also contends that R.C. 2929.14(F)(1) impinges on the separation-of-powers doctrine by permitting the executive branch to impose post-release control sanctions without a court order. Here, the executive branch did not impose post-release control upon Okuwa. The trial court imposed post-release control in both Okuwa's

⁸ 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.

⁹ *Foster*, supra, ¶100.

¹⁰ 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.

OHIO FIRST DISTRICT COURT OF APPEALS

original sentence and his sentence imposed after remand. Okuwa's second assignment of error is without merit.

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., CUNNINGHAM and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 14, 2007
per order of the Court _____.

Presiding Judge