

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

STATE OF OHIO,	:	APPEAL NO. C-070136
		TRIAL NO. B-0105753
Plaintiff-Appellee,	:	
		<i>JUDGMENT ENTRY.</i>
vs.	:	
THOMAS P. LEACH, JR.,	:	
Defendant-Appellant.	:	

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

Thomas Leach was convicted of abduction, kidnapping, gross sexual imposition, and accompanying firearm specifications. The trial court sentenced Leach to twelve years in prison. Leach appealed, and this court remanded the case to the trial court for re-sentencing consistent with *State v. Foster*.<sup>2</sup> The trial court again sentenced him to twelve years.

Leach appeals again. In his sole assignment of error, Leach contends that he was improperly given more than the minimum sentences and consecutive sentences. He argues that *Foster* is unconstitutional both on its face and as applied to him because it was applied retroactively.

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

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

**OHIO FIRST DISTRICT COURT OF APPEALS**

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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.<sup>3</sup>

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.<sup>4</sup> Ohio appellate courts have determined that *Foster* may be applied retroactively.<sup>5</sup>

Leach contends that *Foster* is unconstitutional on its face. Not so. No Ohio or federal court has ruled that *Foster* is unconstitutional. And this court and other Ohio appellate courts have determined that *Foster* may be applied retroactively. Leach's assignment of error is overruled.

Therefore, we affirm the judgment of the trial court.

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., SUNDERMANN and DINKELACKER, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on November 21, 2007  
per order of the Court \_\_\_\_\_.

Presiding Judge

<sup>3</sup> 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.

<sup>4</sup> *Foster*, supra, ¶100.

<sup>5</sup> 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.