

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2006 CA 97
v.	:	T.C. NOS. 99 CR 0614
	:	99 CR 0656
JASON R. COLQUITT	:	
	:	(Criminal Appeal from
Defendant-Appellant	:	Common Pleas Court)
	:	

**OPINION**

Rendered on the 28<sup>th</sup> day of September, 2007.

WILLIAM H. LAMB, Atty. Reg. No. 0051808, Assistant Prosecuting Attorney, P.O. Box 1608, Springfield, Ohio 45501  
Attorney for Plaintiff-Appellee

JASON R. COLQUITT, #A410-508, Chillicothe Correctional Institution, 15802 State Route 104 North, P.O. Box 5500, Chillicothe, Ohio 45601  
Defendant-Appellant

WOLFF, P.J.

{¶ 1} On March 12, 2001, the trial court imposed consecutive sentences of six and two years on two drug charges to which Jason Colquitt pleaded guilty.

{¶ 2} On June 27, 2006, Colquitt filed a pro se motion for “judicial recall of sentencing mandate”, seeking resentencing.

{¶ 3} The trial court treated Colquitt’s motion as one for resentencing and overruled it for the reasons that Colquitt’s sentence was beyond the reach of *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, ¶104, and because Colquitt had not appealed his sentence.

{¶ 4} On appeal, Colquitt argues that *Foster* should not be restricted to cases at the trial stage or on direct appeal because *Foster* “gutted” S.B. 2, thus creating substantial changes in the sentencing law that warrant retroactive application due to ex post facto considerations.

{¶ 5} We have held that *Foster* does not operate as an ex post facto law. *State v. Smith*, Montgomery App. No. 21004, 2006-Ohio-4405. We have also held that we are without jurisdiction to declare that *Foster*’s mandate operates as an unconstitutional ex post facto law. *State v. Durbin*, Greene App. No. 2005-CA-134, 2006-Ohio-5125. Finally, following *Foster*, we have restricted the *Foster* remedy to cases on direct appeal. See *State v. Wilson* (Sept. 7, 2007), Montgomery App. No. 21741.

{¶ 6} Accordingly, Colquitt’s assignments of error – which assert a substantial deprivation of federal constitutional rights due to the trial court’s denial of his motion – are overruled.

{¶ 7} The judgment will be affirmed.

.....

BROGAN, J. and FAIN, J., concur.

Copies mailed to:

William H. Lamb  
Jason R. Colquitt  
Hon. Richard J. O’Neill