

[Cite as *State v. Rickey*, 2006-Ohio-1673.]

COURT OF APPEALS  
TUSCARAWAS COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

MICHAEL RICKEY, II.

Defendant-Appellant

JUDGES:

Hon. John W. Wise, P.J.  
Hon. William B. Hoffman, J.  
Hon. Sheila G. Farmer, J.

Case No. 05AP070051

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Tuscarawas County Court  
of Common Pleas, Criminal Case No.  
2004CR110321

JUDGMENT:

Vacated and remanded

DATE OF JUDGMENT ENTRY:

March 29, 2006

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

SCOTT J. MASTIN  
Assistant Tuscarawas County Prosecutor  
125 East High Avenue  
New Philadelphia, Ohio 44663

DOUGLAS A. MILHOAN  
601 South Main Street  
North Canton, Ohio 44720

*Hoffman, J.*

{¶1} Defendant-appellant Michael Rickey, II, appeals his sentence entered by the Tuscarawas County Court of Common Pleas, on one count of attempted rape, which the trial court ordered be served consecutively to a sentence on an unrelated case. Plaintiff-appellee is the State of Ohio.

#### STATEMENT OF THE CASE<sup>1</sup>

{¶2} On May 23, 2005, appellant entered a plea of guilty to one count of attempted rape, a felony of the second degree, in violation of R.C. 2907.02 and R.C. 2923.02. The trial court conducted a sentencing hearing on June 9, 2005. After hearing arguments from defense counsel and the State, the trial court sentenced appellant to a three year period of incarceration. The trial court ordered the sentence be served consecutively to a seven year term previously imposed on an unrelated offense from Coshocton County, for an aggregate total of ten years. The trial court memorialized appellant's sentence via Judgment Entry on Sentence filed June 13, 2005.

{¶3} Appellant raises as error:

{¶4} "I. THE IMPOSITION OF CONSECUTIVE SENTENCES IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND CONTRARY TO THE LAW."

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{¶5} Herein, appellant challenges the trial court's imposition of consecutive sentences. Specifically, appellant asserts the trial court failed to make the statutorily

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<sup>1</sup> A statement of the underlying facts is not necessary to our disposition of this appeal.

enumerated findings and give reasons supporting those findings at the sentencing hearing pursuant to *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165.

{¶16} Recently, in *State v. Foster*, \_\_Ohio St.3d\_\_, 2006 Ohio St.3d 856, the Ohio Supreme Court found R.C. 2929.14 (E)(4), which governs the imposition of consecutive sentences, violates the principles announced by the United States Supreme Court in *Blakely v. Washington* (2004), 542 US 296, 124 S.Ct. 2531, 159 L.Ed.2<sup>nd</sup> 403; therefore, is unconstitutional. Based upon *Foster*, we find appellant's sentence is deemed void. Accordingly, we vacate the sentence and remand the matter to the trial court for a new sentencing hearing in accordance with *Foster*.

{¶17} The sentence of the Tuscarawas County Court of Common Pleas is vacated and the matter remanded for resentencing.

By: Hoffman, J.

Wise, P.J. and

Farmer, J. concur

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JUDGE WILLIAM B. HOFFMAN

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JUDGE JOHN W. WISE

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JUDGE SHEILA G. FARMER

