

SUPREME COURT OF OHIO

State v. Foster

109 Ohio St. 3d 1 (Ohio 2006) · No. Nos. 2004-1568, 2004-1771, 2005-0735, 2005-2156 · Decided February 27, 2006

SUMMARY

The Ohio Supreme Court considers whether Ohio’s felony-sentencing statutes violate the Sixth Amendment under *Apprendi v. New Jersey* and *Blakely v. Washington*. The court concludes that portions of the sentencing scheme are unconstitutional because they require judicial fact-finding and adopts a severance remedy modeled on *United States v. Booker*, rendering certain statutory requirements advisory. The consolidated cases involve challenges to minimum, maximum, consecutive, repeat-violent-offender, and major-drug-offender sentences.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Lanzinger, J.; Moyer, C.J.; Pfeifer, J.; Lundberg Stratton, J.; O’Connor, J.; O’Donnell, J.; Resnick, J.
JURISDICTION	Ohio
DECIDED	February 27, 2006
DOCKET	Nos. 2004-1568, 2004-1771, 2005-0735, 2005-2156
DISPOSITION	other
PROCEDURAL POSTURE	Four discretionary criminal sentencing appeals were consolidated sua sponte to determine whether Ohio's felony-sentencing statutes violated the Sixth Amendment under <i>Apprendi</i> and <i>Blakely</i> .
STANDARD OF REVIEW	Constitutionality of sentencing statutes reviewed de novo; sentencing appellate review under the statutory clear-and-convincing-evidence framework was discussed but affected provisions were severed.
PRECEDENTIAL VALUE	Published, precedential decision of the Supreme Court of Ohio.
PARTIES	Andrew Foster, Robert Adams, Jeannett S. Horn, State of Ohio in <i>State v. Quinones</i> v. State of Ohio in <i>State v. Foster</i> , Jason Quinones, State of Ohio in <i>State v. Adams</i> , State of Ohio in <i>State v. Horn</i>

TOPICS

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QUESTIONS PRESENTED

1. Whether Ohio's statutory requirements for imposing more-than-minimum prison terms violate the Sixth Amendment when based on judicial fact-finding.
2. Whether Ohio's statutory requirements for imposing maximum prison terms violate the Sixth Amendment under Apprendi and Blakely.
3. Whether Ohio's statutory requirements for imposing consecutive prison terms violate the Sixth Amendment.
4. Whether Ohio's repeat-violent-offender and major-drug-offender additional penalty provisions violate the Sixth Amendment when they require judicial fact-finding.
5. Whether Ohio's default provisions for community control in lower-level felonies violate Blakely.
6. Whether the unconstitutional sentencing provisions could be severed and excised rather than invalidating the entire sentencing scheme.
7. Whether the defendants were entitled to new sentencing hearings and whether the remedy applied to cases pending on direct review.

HOLDINGS

1. R.C. 2929.14(B) and the related provision in R.C. 2929.19(B)(2) are unconstitutional because they require judicial fact-finding before a court may impose more than the shortest prison term authorized for the offense.
2. R.C. 2929.14(C) is unconstitutional because it requires judicial fact-finding before a maximum prison term may be imposed.
3. R.C. 2929.14(E)(4) and the related concurrency provision in R.C. 2929.41(A) are unconstitutional insofar as they require judicial fact-finding before consecutive prison terms may be imposed.
4. R.C. 2929.14(D)(2)(b) and (D)(3)(b) are unconstitutional because they require judicial fact-finding before additional repeat-violent-offender or major-drug-offender prison penalties may be imposed.
5. Ohio's lower-level-felony community-control provisions do not violate Blakely because they do not create a presumption that community control is the maximum sentence absent judicial findings.
6. The unconstitutional sentencing provisions are severable and must be excised, leaving trial courts with full discretion to impose prison terms within the statutory ranges and to impose consecutive terms without the previously required judicial findings.
7. Foster, Quinones, and Adams must be remanded for new sentencing hearings, and the new rule applies to all cases pending on direct review; Horn's sentence was affirmed because it did not include an unconstitutional additional major-drug-offender penalty.

KEY QUOTATIONS

“Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” (109 Ohio St. 3d at 4)

“the ‘statutory maximum’ for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant.” (109 Ohio St. 3d at 5)

“trial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences.” (109 Ohio St. 3d at 30)

FACTUAL BACKGROUND

Foster pleaded no contest to 26 felony counts arising from a series of commercial break-ins, thefts, forgeries, and cocaine possession and received an aggregate nine-year sentence. Quinones pleaded guilty to four felony sex offenses and received maximum and consecutive terms totaling approximately eleven and one-half years. Adams was convicted of aggravated vehicular homicide and related offenses after a drug-impaired automobile accident and received consecutive maximum terms and repeat-violent-offender penalties. Horn was convicted of possessing more than 100 grams of crack cocaine and received the statutory ten-year major-drug-offender term.

PROCEDURAL HISTORY

Foster, Quinones, Adams, and Horn received felony sentences in Ohio trial courts involving more-than-minimum, maximum, consecutive, or enhanced prison terms. The respective intermediate appellate courts affirmed or otherwise ruled on the sentences, with Quinones's maximum sentences vacated and remanded. The Supreme Court of Ohio accepted discretionary appeals and resolved the constitutionality of the statutory sentencing structure and the appropriate remedy.

DISPOSITION

other

REMAND INSTRUCTIONS

Foster, Quinones, and Adams were remanded to the trial courts for new sentencing hearings consistent with the severance remedy. The courts were to apply the unaffected sentencing provisions, impose any sentence within the appropriate felony range, and were permitted to impose consecutive terms without the severed judicial findings. The parties could stipulate to proceeding on the existing record, and the State could seek greater penalties.

CASES CITED

- Apprendi v. New Jersey, 530 U.S. 466 (2000)
- Blakely v. Washington, 542 U.S. 296 (2004)
- United States v. Booker, 543 U.S. 220 (2005)

- Ring v. Arizona, 536 U.S. 584 (2002)
- Duncan v. Louisiana, 391 U.S. 145 (1968)
- McMillan v. Pennsylvania, 477 U.S. 79 (1986)
- Geiger v. Geiger, 117 Ohio St. 451, 160 N.E. 28 (1927)
- Griffith v. Kentucky, 479 U.S. 314 (1987)
- State v. Edmonson, 86 Ohio St. 3d 324, 715 N.E.2d 131 (1999)
- State v. Comer, 99 Ohio St. 3d 463, 793 N.E.2d 473 (2003)
- State v. Lett, 161 Ohio App. 3d 274, 829 N.E.2d 1281 (2005)
- State ex rel. Mason v. Griffin, 104 Ohio St. 3d 279, 819 N.E.2d 644 (2004)
- State v. Jordan, 104 Ohio St. 3d 21, 817 N.E.2d 864 (2004)
- United States v. DiFrancesco, 449 U.S. 117 (1980)
- State v. Natale, 184 N.J. 458, 878 A.2d 724 (2005)
- Smylie v. State, 823 N.E.2d 679 (Ind. 2005)

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