

State of Ohio

Case No. 2007-1254

v.

E N T R Y

William J. Silsby

This cause is pending before the Court on the certification of a conflict by the Court of Appeals for Geauga County. On review of the order certifying a conflict,

It is determined that a conflict exists. The parties are to brief the issue stated at page 3 of the court of appeals' Judgment Entry filed July 6, 2007, as follows:

"1. Whether a delayed appeal under Ohio Rule of Appellate Procedure 5(A) is identical to a direct appeal under Ohio Rule of Appellate Procedure 4(A) for purposes of appellate review as to whether a defendant was sentenced upon the basis of an unconstitutional statute under the guidelines of *State v. Foster*.

"2. Whether a defendant's sentence must be reversed on the basis of *State v. Foster* when: a) the defendant was sentenced prior to the announcement of *State v. Foster*; b) the defendant was sentenced under the statutes found to be unconstitutional in *State v. Foster*; c) the defendant does not pursue a direct appeal but rather files a delayed appeal; d) and raises the issues of unconstitutional sentencing on the basis of *Foster* for the first time on delayed appeal."

It is ordered by the Court that the Clerk shall issue an order for the transmittal of the record from the Court of Appeals for Geauga County.

(Gauga County Court of Appeals; No. 2006G2725)

THOMAS J. MOYER
Chief Justice