NO. 08-661

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO
NO. 89456

STATE OF OHIO,

Plaintiff-Appellee

-vs-

HUGH HUNTER

Defendant-Appellant

MERIT BRIEF OF APPELLEE

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I. STATEMENT OF THE CASE AND FACTS

After a bifurcated trial, Appellant was convicted of felonious assault in violation of R.C. 2903.11 by a jury and of a repeat violation offender specification in violation of R.C. 2941.149. The trial court sentenced Appellant to the maximum sentence of eight years for felonious assault and an additional two years for the repeat violent offender specification for an aggregate sentence of a term of incarceration of ten years. In affirming the conviction in its opinion, the Eighth District Court of Appeals found the following facts relevant to its determination of Appellant's assignments of error:

> {¶ 2} On September 1, 2004, Hunter attacked Andrew McAuliffe ("McAuliffe") as McAuliffe was closing up the church after attending the 7:00 o'clock morning mass at Saint Malachi church on 2459 Washington Street in Cleveland, Ohio. Without provocation, Hunter started beating McAuliffe in the face, causing multiple fractures and lacerations. Cleveland Police Officers arrested Hunter that same day.
>
> ***
>
> On October 12, 2004, the trial court referred Hunter to the Court Psychiatric Clinic ("Clinic") for competency and sanity evaluations. On November 10, 2004, the Clinic reported that Hunter "refused to cooperate with the evaluation" and it was therefore unable to render an opinion as to his competency. The trial court ordered that Hunter be transferred to Northcoast Behavioral Healthcare Center for a twenty-day inpatient competency evaluation. On December 16, 2004, this case was transferred to the mental health docket.
>
> ***
>
> Eventually, the Clinic filed two competency evaluations, dated March 21 and May 11, 2005, both of which concluded that Hunter was competent to stand trial. The State of Ohio ("State") and defense counsel stipulated to the evaluations, and on May 23, 2005, the trial court adopted the findings, concluding that Hunter was competent to stand trial.
>
> {¶ 5} After determining Hunter's competency, the trial court attempted to hold a plea hearing. The trial court, through the advice of defense counsel, anticipated that Hunter would plead guilty to felonious assault and the State would dismiss the specifications. However, during the court's discussion with Hunter, it appeared that Hunter believed his attorney did not understand his position. The trial court postponed the

hearing. On June 2, 2005, the trial court held another change of plea hearing. However, at the hearing, Hunter was adamant that he did not want to plead guilty. Because of this decision, the trial court referred Hunter to the Clinic for the fourth time to be re-evaluated for competency and sanity.

{¶ 6} On July 28, 2005, the trial court ordered Hunter to undergo an inpatient competency evaluation at Twin Valley Behavioral Healthcare ("Twin Valley") in Columbus. On December 8, 2005, after Hunter returned from Twin Valley, the trial court referred him to the Clinic for a sanity evaluation. However, Hunter refused to cooperate with the Clinic, and on January 11, 2006, the trial court referred him to Twin Valley for an inpatient sanity evaluation. On January 18, 2006, the trial court issued its second order requiring Hunter to take all prescribed medications and permitting staff to use "reasonable force" in administering them. On April 4, 2006, the trial court ordered Hunter returned from Twin Valley.

{¶ 7} On May 18, 2006, the trial court conducted its third change of plea hearing and, once again, Hunter stated that he was not going to plead guilty. During a brief hearing on July 13, 2006, the trial court questioned Hunter about whether he was taking his medications. Hunter told the court that he felt he did not need them, but that he was not feeling well. After that, Hunter slipped off of his chair, fell to one knee, and then lay prone on the floor. The trial court issued its third order requiring Hunter to take all prescribed medications. On July 27, 2006, the trial court referred Hunter, for the sixth time, to the Clinic for competency evaluations.

{¶ 8} On October 23, 2006, Hunter's case proceeded to trial. Hunter stipulated to the notice of prior conviction specification and asked that the repeat violent offender specification be bifurcated and determined by the trial court. The court agreed. During trial, the State called two witnesses and rested; defense counsel did not present witnesses. The jury retired and, after deliberating, found Hunter guilty of felonious assault as charged in the indictment.

{¶ 9} After the jury's verdict, but prior to the bench trial on the repeat violent offender specification, the parties discussed a possible plea agreement. The potential agreement involved Hunter pleading guilty on an additional felony case in return for the dismissal of the repeat violent offender specification in the present case. Once again, Hunter displayed confusion and ultimately decided he did not want to plead guilty.

{¶ 10} That same day, the trial court began Hunter's trial on the repeat violent offender specification. During this portion of his trial, Hunter stipulated to his indictment and conviction for felonious assault in

> CR240691 and to the medical records associated with that case. Deputy Sheriff Jimmy Fields testified about his investigation into the 1989 incident. Deputy Sheriff Fields stated that in 1989, Hunter assaulted corrections officer Gregory Rickett while he was in the psychiatric "pod" of the Cuyahoga County Jail. According to Deputy Sheriff Fields, Rickett received a laceration that required stitches. The trial court determined that the "physical harm specification has been proved beyond a reasonable doubt" and proceeded immediately to sentencing.

State v. Hunter, Cuyahoga App. No. 89456, 2008-Ohio-794, at ¶ 3-10.

Further, the docket reflects that Hunter filed a written waiver of jury as to the repeat violent offender specifications. Oct. 24, 2006 Journal Entry.

This Court accepted Appellant's first proposition of law that reads:

> The RVO-enhanced sentences imposed upon appellant constituted a deprivation of his liberty without due process of law and a violation of his constitutional right to a trial by jury.

The State asks that this Court continue to find that sentencing courts have the discretion to impose an additional ten year sentence upon repeat violent offenders pursuant to prior R.C. 2941.149.

II. LAW AND ARGUMENT

After *State v Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, sentencing courts in Ohio retain the authority to impose an additional term of incarceration upon repeat violent offenders. In this case, Hunter asked that the repeat violent offender specifications be bifurcated from the underlying criminal charges and waived any right to a jury. He was found guilty of the specification. R.C. 2929.14(D) provides that where a defendant is found guilty of a specification pursuant to R.C. 2941.149, the trial court may impose an additional term of incarceration if it imposes the maximum sentence on the underlying felony. Here, after imposing the maximum sentence upon the felonious assault

conviction, the trial court imposed 2 additional years incarceration upon Hunter pursuant to R.C. 2941.149. The Court of Appeals affirmed the sentence and this Court accepted for review Appellant's first proposition of law, which reads:

> The RVO-enhanced sentences imposed upon appellant constituted a deprivation of his liberty without due process of law and a violation of his constitutional right to a trial by jury.

The State asks that this Court again find that sentencing courts continue to retain the authority to exercise discretion and may impose an additional prison term where a defendant is found guilty of the R.C. 2941.149 specification.

1. REPEAT VIOLENT OFFENDERS MAY BE SENTENCED TO THE ADDITIONAL PRISON SENTENCE PROVIDED BY R.C. 2929.14(B)(2).

This Court has already determined that the additional penalty in R.C. 2929.14(B)(2) for repeat violent offenders remains in full force and effect in Ohio. In *State v. Foster,* 109 Ohio St.3d 1, 2006-Ohio856, as well as in *State v. Mathis*, 109 Ohio St.3d 54, 846 N.E.2d 1, 2006-Ohio-855, this Court thoroughly reviewed Ohio's sentencing statutes in light of *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403. In reviewing the additional time for sentencing pursuant to the repeat violent offender specification, this Court in *Foster*, *supra*, held as syllabus law at paragraph 6, "R.C. 2929.14(D)(2)(b) and (D)(3)(b) are capable of being severed. After the severance, judicial factfinding is not required before imposition of additional penalties for repeat violent offender and major drug offender specifications. (*United States v. Booker* (2005), 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621, followed.)"

The clear intent of this Court's decision was pronounced in the syllabus; this Court had no intention of denying the legislative intent to provide for additional enhanced sentencing for repeat violent offenders. In addition to this case, the Eighth

Appellate district followed this Court's pronouncement of law in *Foster* at syllabus paragraph 6, holding, "We read this to mean that only the offending portion of R.C. 2929.14(D)(2)(b) is severed. Consequently, the imposition of an additional penalty for the RVO violation is constitutional. Thus, a judge may impose an additional one-to-ten year sentence on an RVO specification without judicial fact-finding." *State v. Fitzer*, Cuyahoga App. No. 88177, 2007-Ohio-2496, at ¶ 6.

The court of appeals did not err in this case in interpreting Foster. This Court has also affirmed repeat violent offender sentencing scheme as pronounced in *Foster*. In *State v. Mathis,* 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, at ¶26, this Court reiterated that only the requirement of judicial factfinding in R.C. 2929.14(D)(2)(b) was severed. Additionally, in *State v. Evans*, 113 Ohio St.3d 100, this Court stated:

> At the time the court of appeals conducted its review in this case, we had not yet decided three cases that are relevant here. In the first, *State v. Foster*, *109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470*, in accordance with decisions of the United States Supreme Court in *Apprendi v. New Jersey* (2000), 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435, *Ring v. Arizona* (2002), 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556, and *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531, 2538, 159 L.Ed.2d 403, we held that statutory requirements that trial judges make certain findings before imposing an enhanced sentence are unconstitutional. *Foster*, *109 Ohio St.3d* 1, 2006-Ohio-856, 845 N.E.2d 440, paragraph one of the syllabus. **We severed the offending statutes and held that trial courts "are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences" or "before imposition of additional penalties for repeat-violent-offender and major-drug-offender specifications." Id. at paragraphs six and seven of the syllabus.**

(Emphasis added.)

After *Foster*, and in addition to the Eighth District Court of Appeals decision in this case, other courts of appeal have continued to allow sentencing courts to impose penalties upon repeat violent offenders. *State v. Payne*, Lake App. No. 2007-L-272,

at ¶ 42 ("Upon remand, the court is instructed to sentence Mr. Payne within the one to ten-year range for the RVO specification, since he previously pled guilty to a felony that is classified as an offense of violence pursuant to R.C. 2929.01(DD)(1)(1) and (2).")

Appellant relies on this Court's opinion in *State v. Chandler*, 109 Ohio St. 3d 223, 2006-Ohio-2285. This Court did not overrule the syllabus law in Foster, further it did not address the issues raised by Hunter in the instant case. As noted by the Eleventh District Court of Appeals, "Evidence that the Supreme Court considered it constitutionally permissible to impose repeat violent offender and major drug offender penalty enhancements after *Foster* is also found in the syllabus. As quoted above, the court held that, "[a]fter the severance [of R.C. 2929.14(D)(2)(b) and (D)(3)(b)], judicial factfinding is not required before imposition of additional penalties for repeat violent offender and major drug offender specifications." *Id.* at paragraph six of the syllabus. If [Appellant's] interpretation were correct, this part of the court's holding would be rendered nonoperative." *State v. Adams*, Lake App. No. 2006-L-114, 2007 -Ohio-2434, at ¶ 25. This Court did not eviscerate the ability of a sentencing court impose an additional penalty upon repeat violent offenders in *Chandler*, nor should it.

2. REPEAT VIOLENT OFFENDER SENTENCING REFLECTS THE GENERAL ASSEMBLY'S INTENT IN PROVIDING FOR THE PROTECTION OF THE PUBLIC AND APPROPRIATE PUNISHMENT FOR OFFENDERS

There is no ambiguity in this Court's holding in *Foster* and this Court has correctly recognized the legislative intent by allowing for sentencing courts to impose additional time upon repeat violent offenders. In *Foster*, this Court stated, ""we do not

believe that the General Assembly would have limited so greatly the sentencing court's ability to impose an appropriate penalty." *Foster, supra,* at ¶ 89.

In resolving this issue in Foster, Hunter complains that this Court misinterpreted the intent of the legislature and cannot sever a statute in mid-sentence. However, a reading of Ohio's sentencing statutes shows clear legislative intent that sentencing courts are to have the ability to impose an additional term of incarceration upon repeat violent offenders when they commit additional acts of violence. This is evidenced by the statement of the overriding purposes of sentencing to protect the public and to punish the offender. R.C. 2929.12(A). The ability to punish repeat offenders is a logical extension of these stated sentencing principles. This Court should continue to recognize these principles.

When reading the provisions of R.C. 2941.149, 2929.01(DD), and R.C. 2929.14(D)(2)(b) together, this Court can recognize that a repeat violent offender is subject to additional punishment so long as the specification is properly presented to the trier-of-fact. Although Hunter characterizes the Court's findings as to his repeat violent offender status throughout his brief in this matter as "judicial fact-finding", he fails to note that the specification in this case was in fact put to trial before the bench by his waiver. As such, the trier of fact found the facts found in this matter and his argument under *Blakely* to reexamine the syllabus law in *Foster* is not credible. Moreover, this Court has noted the validity of the ability of the sentencing court to impose additional time upon repeat violent offenders.

Severing only the judicial fact-finding portion of R.C. 2929.14(B)(2) protects and preserves the stated principles of protecting the community and providing appropriate

punishment. If this Court adopts Hunter's proposition, it would then be required to sever the entire statute and trial court judges lose the ability to impose enhanced sentences upon those criminals who repeatedly commit violent offenses. The General Assembly intention to give discretion to judges to protect and punish in their discretion is defeated. This Court noted that intent by the General Assembly by adding sentence-enhancing specifications, and stated that even after severance under *Foster*, "[t] he overwhelming majority of those reforms survive today's constitutional decision." *Id.* at ¶ 101.

After arguing that this Court should not sever R.C. 2929.14(B) in "mid sentence", Hunter further argues that pursuant to former R.C. 2941.149(A), his right to a trial by jury as guaranteed by the sixth amendment has been infringed where the language of the specification and the definition of a repeat violent offender found in former R.C. 2929.01(DD) require findings not presented to a jury. Here, they were presented to the finder of fact, the Court, after a waiver of the jury. Beyond this procedural fact, the findings required for the definition are within the realm of traditional facts that are to be considered by a sentencing court and are not inexorably bound to the right to trial by jury.

Finally, Hunter argues that the severance of fact-finding under Foster amounts to an ex post facto application of law. See, 109 Ohio St.3d 1408, 845 N.E.2d 524 (Table), 2006 -Ohio- 1703. Appellant further argues that the *Foster* decision violates the federal *ex post facto* clause because it disadvantages him because he alleges a right to judicial findings and is negatively affected by the severance of sentencing findings. Hunter relies on *Miller v. Florida* (1987) and argues that this Court enlarged

Ohio sentencing statutes in the same way Florida legislators increased presumptive sentences in modified guidelines that were used to sentence the defendant in Miller. The argument consists of claims that when this Court severed presumptions of concurrent and minimum prison terms for first time offenders and the preference for community control sanctions for some offenses, it enlarged sentencing statutes and disadvantages defendants who pled guilty with these provisions intact.

The United States Supreme Court has said that it is fundamental to the concept of due process that a person has the right to fair warning of what conduct will result in criminal sanctions. See *United States v. Harriss* (1954), 347 U.S. 612, 617, 74 S.Ct. 808, 98 L.Ed. 989 ("**[N]**o man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed."). Consequently, "***an unforeseeable judicial enlargement of a criminal statute may not be retroactively applied to conduct occurring before that judicial decision, as such application offends the notion of fair warning embodied in the Fourteenth Amendment's Due Process Clause." See *Bouie v. Columbia* (1964), 378 U.S. 347, 84 S.Ct. 1697, 12 L.Ed.2d 894; *Marks v. United States* (1977), 430 U.S. 188, 97 S.Ct. 990, 51 L.Ed.2d 260; *Rabe v. Washington* (1972), 405 U.S. 313, 315, 92 S.Ct. 993, 31 L.Ed.2d 258. Neither the U.S. Supreme Court nor the Ohio Supreme Court considers a decision to be retroactive or retrospective when it is applied to cases pending on direct appeal. *Griffith v. Kentucky* (1987), 479 U.S. 314, 107 S.Ct. 708, 93 L.Ed.2d 649.

It goes without saying that the remedy chosen by the *Foster* court followed the remedy chosen by the United States Supreme Court in *Booker*. Indeed the Court in *Foster* specifically noted that the remedy chosen must be applied to cases pending on

direct review. *Foster*, 2006-Ohio-856 at 106. Of particular relevance herein is the fact that many federal criminal defendants argued that post-*Booker* re-sentencing violates ex post facto. Post-*Booker*, the federal circuit courts have consistently rejected the argument that being resentenced after the *Booker* remedy violates ex post facto clause. *United States v. Duncan* (11th Cir. 2005), 400 F.3d 1297, cert. denied, --- U.S. ----, 126 S.Ct. 432, 163 L.Ed.2d 329 (2005).See also, *United States v. Austin* (5th Cir. 2005), 432 F.3d 598; *United States v. Scroggins* (5th Cir. 2005), 411 F.3d 572, 576; *United States v. Dupas* (9th Cir. 2005), 419 F.3d 916 *United States v. Jamison* (7th Cir. 2005), 416 F.3d 538; *United States v. Lata* (1st Cir. 2005), 415 F.3d 107; *United States v. Duncan*, 400 F.3d 1297 (11th Cir.) (same), cert. denied, --- U.S. ----, 126 S.Ct. 432, 163 L.Ed.2d 329 (2005).

In addition, Appellant ignores the fact that the *Foster* court did not in any way modify or "enlarge" the penalty ranges for felony offenses, *i.e.*, it did not "enlarge" criminal penalties. Appellant and all criminal defendants in Ohio are exposed to the same possible penalties in R.C. 2929.14(A) and pursuant to indicted specifications as they were before *Foster*. This Court simply removed the constitutionally offensive required judicial fact-finding function that served to regulate specific sentencing requirements such as those for repeat violent offenders and major drug offenders.

In this case upon the indictment, Hunter's potential penalties remain unchanged under *Foster*, unlike the sentencing guidelines in *Miller* that exposed the defendant to greater punishment and violated the concept of due process. Appellate Courts have rejected these ex post facto arguments. See, *State v. Mallette*, Cuyahoga App. No. 87984, 2007-Ohio-715 (8th Dist.); *State v Elswick,* Lake App. No. 2006-L-075, 2006-

Ohio-7011 (11th Dist.); *State v. Smith*, Montgomery App. No. 21004, 2006-Ohio-4405 (2nd Dist.); *State v. Newman*, Summit App. No. 23038, 2006-Ohio-4082 (9th Dist.); *State v. McGhee*, Shelby App. No. 17-06-05, 2006-Ohio-5162 (3rd Dist.)

This Court properly determined that the ability of trial courts to sentence offenders remains constitutional after the Foster decision. Sentencing courts may impose additional terms upon repeat violent offenders and this Court did not err by the remedy of severing a portion of R.C. 2929.14(B)(2) in preserving the General Assembly's intent to provide a sentencing court the ability to protect the public from repeat violent offenders. Further, the remedy pronounced in Foster is not an ex post facto law. Accordingly, the State asks that this Court affirm the sentence imposed

III. CONCLUSION

The general assembly provided for enhanced penalties for repeat violent offenders and provided a limit to the discretion of the sentencing court by requiring that specific findings be made. Prior to *Foster*, convicted felons were on notice that the commission of further crimes of violence were subject to enhanced penalties. This Court has recognized these premises by holding the enhanced penalties found in R.C. 2929.14(D)(2)(b) remained in force after severing the requirements that findings be made in *Foster*. The State asks that this Court continue to allow trial court's the

discretion and authority to impose an enhanced penalty to protect the public from repeat violent offenders.

Respectfully submitted,

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A copy of the foregoing Merit Brief has been mailed this 10th day of February 2009, to Cullen Sweeney, 310 Lakeside Avenue, 2nd Floor, Cleveland, Ohio 44113.

_____
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Baldwin's Ohio Revised Code Annotated Currentness
Title XXIX. Crimes--Procedure (Refs & Annos)
Chapter 2929. Penalties and Sentencing (Refs & Annos)
Felony Sentencing
2929.12 Factors to consider in felony sentencing

(A) Unless otherwise required by section 2929.13 or 2929.14 of the Revised Code, a court that imposes a sentence under this chapter upon an offender for a felony has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code. In exercising that discretion, the court shall consider the factors set forth in divisions (B) and (C) of this section relating to the seriousness of the conduct and the factors provided in divisions (D) and (E) of this section relating to the likelihood of the offender's recidivism and, in addition, may consider any other factors that are relevant to achieving those purposes and principles of sentencing.

(B) The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is more serious than conduct normally constituting the offense:

(1) The physical or mental injury suffered by the victim of the offense due to the conduct of the offender was exacerbated because of the physical or mental condition or age of the victim.

(2) The victim of the offense suffered serious physical, psychological, or economic harm as a result of the of- fense.

(3) The offender held a public office or position of trust in the community, and the offense related to that office or position.

(4) The offender's occupation, elected office, or profession obliged the offender to prevent the offense or bring others committing it to justice.

(5) The offender's professional reputation or occupation, elected office, or profession was used to facilitate the offense or is likely to influence the future conduct of others.

(6) The offender's relationship with the victim facilitated the offense.

(7) The offender committed the offense for hire or as a part of an organized criminal activity.

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(8) In committing the offense, the offender was motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion.

(9) If the offense is a violation of section 2919.25 or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code involving a person who was a family or household member at the time of the violation, the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children.

(C) The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is less serious than conduct normally constituting the offense:

(1) The victim induced or facilitated the offense.

(2) In committing the offense, the offender acted under strong provocation.

(3) In committing the offense, the offender did not cause or expect to cause physical harm to any person or property.

(4) There are substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense.

(D) The sentencing court shall consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is likely to commit future crimes:

(1) At the time of committing the offense, the offender was under release from confinement before trial or sentencing, under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or under post-release control pursuant to section 2967.28 or any other provision of the Revised Code for an earlier offense or had been unfavorably terminated from post-release control for a prior offense pursuant to division (B) of section 2967.16 or section 2929.141 of the Revised Code.

(2) The offender previously was adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. of the Revised Code, or the offender has a history of criminal convictions.

(3) The offender has not been rehabilitated to a satisfactory degree after previously being adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. of the Revised Code, or the offender has not responded favorably to sanctions previously imposed for criminal convictions.

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(4) The offender has demonstrated a pattern of drug or alcohol abuse that is related to the offense, and the offender refuses to acknowledge that the offender has demonstrated that pattern, or the offender refuses treatment for the drug or alcohol abuse.

(5) The offender shows no genuine remorse for the offense.

(E) The sentencing court shall consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is not likely to commit future crimes:

(1) Prior to committing the offense, the offender had not been adjudicated a delinquent child.

(2) Prior to committing the offense, the offender had not been convicted of or pleaded guilty to a criminal of- fense.

(3) Prior to committing the offense, the offender had led a law-abiding life for a significant number of years.

(4) The offense was committed under circumstances not likely to recur.

(5) The offender shows genuine remorse for the offense.

CREDIT(S)

(2002 H 327, eff. 7-8-02; 2000 S 179, § 3, eff. 1-1-02; 1999 S 107, eff. 3-23-00; 1999 S 9, eff. 3-8-00; 1996 S 269, eff. 7-1-96; 1995 S 2, eff. 7-1-96)

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