

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 22004
Plaintiff-Appellee	:	
	:	Trial Court Case Nos. 2004-CR-1957
v.	:	2004-CR-4019
	:	
JOSHUA BOYD	:	
	:	(Criminal Appeal from
Defendant-Appellant	:	Common Pleas Court)
	:	

.....

O P I N I O N

Rendered on the 7th day of March, 2008.

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MATHIAS H. HECK, JR., by JOHNNNA M. SHIA, Atty. Reg. #0067685, Montgomery
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Defendant-Appellant, *pro se*

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BROGAN, J.

{¶ 1} Joshua Boyd appeals from his conviction in the Montgomery County

Common Pleas Court of felonious assault and a firearm specification. This is Boyd's second appeal to this Court. We remanded the matter on December 1, 2006 for re-sentencing pursuant to *State v. Foster*, 109 Ohio St.3d 1, but affirmed the trial court in all other respects.

{¶ 2} On remand, the trial court sentenced Boyd to the same sentence previously imposed. Boyd appealed again, and his appointed counsel has filed an *Anders* brief wherein he states he can find no arguable merit to the second appeal. Boyd was notified of his counsel's determination, and he has weighed in with his own appellate brief. Boyd contends that the Supreme Court's decision in *State v. Foster*, which he claims eliminated the minimum sentence presumption, operates as an ex post facto law and violates his due process rights protected under the Fourteenth Amendment of the United States Constitution.

{¶ 3} We, of course, are not in a position to rule that the Ohio Supreme Court in *State v. Foster* erred in its decision. See *State v. Smith*, Mont. App. No. 21833, 2007-Ohio-2976.

{¶ 4} We also find no error because the trial court saw fit to impose the same sentence it previously imposed upon Boyd after the *Foster* remand. Trial courts have full discretion to impose a prison sentence within the statutory range, and are no longer required to make findings or give reasons for imposing consecutive or more than minimum sentences. *Foster*, 109 Ohio St.3d 1. See also the recent case of *State v. Mallory*, Allen C.A. No. 1-06-69, 2007-Ohio-1083.

{¶ 5} Lastly, we have reviewed the entire record and we agree with appellate counsel that there is no arguable merit to this appeal. We are satisfied that the

sentence imposed upon Boyd was lawful and was not an abuse of the trial court's discretion. The Judgment of the trial court is Affirmed.

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GRADY, J., and GLASSER, J., concur.

(Hon. George Glasser, retired from the 6th Appellate District,
sitting by assignment of the Chief Justice of the Supreme Court of Ohio)

Copies mailed to:

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Hon. Frances McGee