

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

State of Ohio

Court of Appeals No. H-05-019

Appellee

Trial Court No. CRI-2005-0359

v.

Michael E. Smith

DECISION AND JUDGMENT ENTRY

Appellant

Decided: September 15, 2006

* * * * *

Russell Leffler, Huron County Prosecuting Attorney, for appellee.

K. Ronald Bailey for appellant.

* * * * *

SINGER, P.J.

{¶ 1} This is an appeal from a sentencing judgment issued in the Huron County Court of Common Pleas.

{¶ 2} Appellant, Michael E. Smith, pled guilty to two counts of inducing panic at a school and a single count of attempted voyeurism following incidents wherein he called an elementary school, threatening to kidnap and rape a student.

{¶ 3} Following a pre-sentence investigation, the trial court imposed maximum, consecutive sentences on the inducing panic counts (18 months each) and a concurrent 30 day sentence for attempted voyeurism.

{¶ 4} From this sentence, appellant now brings this appeal, setting forth in two assignments of error assertions that the sentence was statutorily unwarranted by the facts and that the statutory scheme under which appellant was sentenced violated his Sixth Amendment right to a trial by jury.

{¶ 5} Pursuant to 6th Dist.Loc.App.R. 12(C), we sua sponte transfer this matter to our accelerated docket and, hereby, render our decision.

{¶ 6} On authority of *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-865, at paragraphs one and three of the syllabus, appellant's second assignment of error is found well-taken. Pursuant to *Foster*, id. at ¶ 103 et seq., appellant's sentence is vacated and the matter remanded to the trial court for resentencing.

{¶ 7} Appellant's first assignment of error is moot.

{¶ 8} On consideration whereof, the sentencing judgment of the Huron County Court of Common Pleas is vacated and this matter is remanded to said court for resentencing. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Huron County.

JUDGMENT VACATED.

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A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

JUDGE

William J. Skow, J.

JUDGE

Dennis M. Parish, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.