

**[Please see original opinion at 2006-Ohio-3129.]**

IN THE COURT OF APPEALS FOR DELAWARE COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
TERESA TITUS	:	<u>NUNC PRO TUNC</u>
	:	
Defendant-Appellant	:	CASE NO. 05CAA07042

This entry is to clarify an omission on the cover page of this Court's Opinion in the within matter. Although the Opinion specifically refers to trial court Case No's. 04-CR-I-07-315 and 04-CR-I-11-482, the title page only references one trial court number, to wit: 04-CR-I-07-315. Accordingly, this judgment entry shall speak and be in effect Nunc Pro Tunc as of 06/20/06, the date of the former judgment entry of this Court which said judgment entry this judgment entry corrects and replaces.

It is further ordered that the Memorandum-Opinion filed in this cause on December 20, 2006, be corrected to read "Appeal from the Delaware County Common Pleas Court, Case Nos. 04CRI07315 and 04CRI11482" on the cover page and the judgment entry.

IT IS SO ORDERED.

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JUDGES

COURT OF APPEALS  
DELAWARE COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

TERESA M. TITUS

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Julie A. Edwards, J.

Hon. John F. Boggins, J.

Case No. 05CAA07042

OPINION

CHARACTER OF PROCEEDING: Appeal from the Delaware County Court of  
Common Pleas, Case No. 04CRI07315

JUDGMENT: Vacated and Remanded

DATE OF JUDGMENT ENTRY: June 20, 2006

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

PAUL L. SCARSELLA  
Assistant Prosecuting Attorney  
140 N. Sandusky Street, 3rd Floor

DAVID H. BIRCH  
2 West Winter Street  
Delaware, Ohio 43015

Delaware, Ohio 43015

*Hoffman, P.J.*

{¶1} Defendant-appellant Teresa M. Titus appeals her sentence entered by the Delaware County Court of Common Pleas, following her conviction on numerous counts of forgery, identity fraud, and theft under two separate case numbers, 04-CR-I-07-315 and 04-CR-I-11-482.

#### STATEMENT OF THE CASE<sup>1</sup>

{¶2} Following appellant's entering guilty pleas to the aforementioned charges, the trial court conducted a sentence hearing on June 10, 2005. The trial court sentenced appellant to a total term of actual imprisonment of five years and eleven months. The trial court ordered some of the sentences to run consecutively, and other sentences to run concurrently.

{¶3} Appellant appeals the June 15, 2005 Judgment Entry on Sentence, assigning as error:

{¶4} "I. THE TRIAL COURT ERRED BY IMPOSING CONSECUTIVE SENTENCES, SAID SENTENCES BEING CONTRARY TO LAW

{¶5} "II. APPELLANT WAS IMPROPERLY SENTENCED TO CONSECUTIVE SENTENCES THAT EXCEED THE MAXIMUM PRISON TERM ALLOWED FOR THE MOST SERIOUS OFFENSE OF WHICH THE APPELLANT WAS CONVICTED."

I & II

{¶6} We shall address appellant's assignments of error together.

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<sup>1</sup> A rendition of the facts is unnecessary for our resolution of appellant's assignments of error.

{¶17} In its Sentencing Entry, the trial court found, pursuant to O.R.C. 2929.14 (B), the shortest prison term would demean the seriousness of appellant's conduct and the shortest prison term would not adequately protect the public from future crime. Based upon such finding, the trial court sentenced appellant to more than the minimum term. The trial court also made the requisite findings under R.C. 2929.14 (E)(4) in ordering some of the sentences to run consecutively.

{¶18} Subsequent to the filing of briefs by the parties, the Ohio Supreme Court announced its decision in *State v. Foster*, \_\_\_Ohio St.3d \_\_\_, 2006-Ohio-856. Therein, the Ohio Supreme Court found R.C. 2929.14 (B) and R.C. 2929.14 (E)(4) unconstitutional. *Id.*, syllabus nos. 1 and 3, respectively. The *Foster* Court determined sentences based upon unconstitutional statutes are void and the appropriate disposition is to vacate the sentence and remand the matter to the trial court for a new sentencing hearing. *Id.* at para. 103. Based upon *Foster*, we sustain appellant's assignments of error.

{¶19} Appellant's sentence is ordered vacated and the case remanded to the trial court for resentencing.

By: Hoffman, P.J.

Edwards, J. and

Boggins, J. concur

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HON. WILLIAM B. HOFFMAN

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HON. JULIE A. EDWARDS

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HON. JOHN F. BOGGINS

