

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

STATE OF OHIO	:	
	:	Appellate Case No. 22425
Plaintiff-Appellee	:	
	:	Trial Court Case No. 1998-CR-4020
v.	:	
	:	(Criminal Appeal from
EDDIE J. JONES, JR.	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 20<sup>th</sup> day of June, 2008.

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MATHIAS H. HECK, JR., by CARLEY J. INGRAM, Atty. Reg. #0020084, Montgomery County Prosecutor’s Office, Appellate Division, Montgomery County Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45422  
Attorney for Plaintiff-Appellee

JEREMIAH DENSLOW, Atty. Reg. #0074784, First National Plaza, 130 West Second Street, Suite 1600, Dayton, Ohio 45402  
Attorney for Defendant-Appellant

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BROGAN, J.

{¶ 1} This matter comes before the court upon Eddie J. Jones, Jr.’s appeal of the Montgomery County Common Pleas Court’s denial of his Petition to Vacate or

Set Aside Judgment/Sentence.

{¶ 2} On March 26, 2008, Jones's court-appointed appellate counsel filed a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, asserting the absence of any meritorious issues for our review. In the *Anders* filing, Jones's counsel did identify one potential issue involving sentencing under *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. After counsel filed the *Anders* brief, we issued an order granting Jones sixty days to file a pro se brief assigning any errors for our review. The sixty-day period has expired, and Jones has not responded.

{¶ 3} Pursuant to *Anders*, we are required to conduct a full examination of all proceedings and to appoint new counsel to assist Jones if we find any issues for review that are not wholly frivolous. *Anders*, 386 U.S. at 744; see also *Penson v. Ohio* (1988), 488 U.S. 75, 76. After reviewing the record in this case, we have not found any issues that are not wholly frivolous. We will affirm.

{¶ 4} A jury convicted Jones for rape, gross sexual imposition, and felonious sexual penetration. On July 8, 1999, the trial court sentenced Jones to life in prison to be served consecutively to a ten-year prison term. Jones timely appealed his conviction and sentence to this Court on August 6, 1999. We affirmed his conviction and sentence on July 21, 2000. *State v. Jones* (July 21, 2000), Montgomery Case No. 17903, unreported. Over seven years later, on August 20, 2007, Jones filed a petition to vacate or set aside his sentence based on an alleged violation of his constitutional rights under *Blakely v. Washington* (2004), 542 U.S. 296. He argued that the trial court inappropriately engaged in judicial fact-finding, resulting in the imposition of a sentence that was longer than the minimum required.

{¶ 5} In his *Anders* brief, appointed counsel points to the Ohio Supreme Court’s decision in *Foster*, as raising a potential constitutional violation for our review. Having reviewed the record, we concur in appointed appellate counsel’s assessment that this argument lacks even potential merit.

{¶ 6} Jones cannot use *Blakely* or *Foster* to collaterally attack his sentence. Quite simply, the rules and principles of those cases are not retroactive. The U.S. Supreme Court expressly limited *Blakely* to cases that were then either pending before a trial court or on direct appeal. *U.S. v. Booker* (2005), 543 U.S. 220. Similarly, the Ohio Supreme Court limited *Foster*’s application to those cases then before the trial courts or pending on direct review. *State v. Deloach*, Montgomery App. No. 21422, 2006-Ohio-6303, at ¶ 22. Jones’s direct appeal ended in 2000; consequently, his appeal was not pending at a time that would allow him to seek relief under either of the aforementioned cases.

{¶ 7} We find no arguable merit in Jones’s claim of a constitutional violation under *Blakely* or under appointed counsel’s suggestion of *Foster*. The decision of the trial court is Affirmed.

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WOLFF, P.J., and FAIN, J., concur.

Copies mailed to:

- Mathias H. Heck, Jr.
- Carley J. Ingram
- Jeremiah Denslow
- Eddie Jones, Jr.
- Hon. Gregory F. Singer