

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-080215
Plaintiff-Appellee,	:	TRIAL NO. B-0307948
vs.	:	<i>JUDGMENT ENTRY.</i>
McAARON MARTIN,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar. This judgment entry is not an opinion of the court.¹

Defendant-appellant McAaron Martin challenges the sentences imposed by the trial court for one count of trafficking in cocaine and for two counts of possession of cocaine, following a remand from this court.

In 2003, Martin was arrested after police officers observed him selling crack cocaine on the streets of Cincinnati. A search of Martin's apartment revealed additional quantities of crack cocaine and marijuana. Following two jury trials and a plea bargain, Martin stood convicted of drug offenses including trafficking in cocaine and possession of cocaine. Counts one and two of the indictment alleged offenses committed when Martin had sold cocaine to the occupant of a silver BMW automobile. Counts three and four charged Martin with possession of various amounts of cocaine found during the subsequent searches.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Martin was initially sentenced to an aggregate 12-year term of imprisonment. The trial court imposed a nine-year prison term for trafficking in cocaine and a consecutive three-year prison term for the possession conviction that derived from the street sale of cocaine. It also imposed an agreed three-year prison term for each of the two remaining possession convictions and ordered those terms to be served concurrently with the sentences imposed for counts one and two.

In two subsequent appeals,² this court affirmed the underlying findings of guilt but twice remanded the case for resentencing under the rules of *State v. Foster*,³ *State v. Cabrales*,⁴ and *State v. Bezak*.⁵

Pursuant to this court's latest mandate,⁶ the trial court conducted a complete, de novo sentencing hearing and again imposed an aggregate sentence of 12 years' imprisonment. But in this instance the sentence was composed of a nine-year prison term for trafficking in cocaine that was consecutive to three-year prison terms for the apartment-search possession convictions. Under the rule of *Cabrales*, the trial court merged the three-year prison term for the street-sale possession conviction with the trafficking sentence.

Martin now raises two assignments of error, one through his counsel and one pro se. Through his counsel, Martin asserts that the imposed sentences were excessive. He argues that, in imposing sentence, the trial court failed to consider the substantial grounds he offered in mitigation, including his progress toward rehabilitation while incarcerated and the strong family support that would be available upon his release.

² See *State v. Martin*, 1st Dist. No. C-050584, 2006-Ohio-5263; and *State v. Martin*, 1st Dist. No. C-070017, 2007-Ohio-6662.

³ 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

⁴ 1st Dist. No. C-050682, 2007-Ohio-857, affirmed by *State v. Cabrales*, 118 Ohio St.3d 54, 2008-Ohio-1625, 886 N.E.2d 181.

⁵ 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, syllabus.

⁶ See *State v. Martin*, 2007-Ohio-6662, at ¶15.

But Martin’s sentences “are presumptively valid, and he bears the burden of showing that the court failed to consider the statutory factors.”⁷ Trial courts have full discretion to impose a prison term within the applicable statutory range.⁸ Here, the trial court heard Martin’s arguments in mitigation, acknowledged the support his parents had provided, reviewed Martin’s criminal record, and for each offense imposed a sentence within the statutory range.⁹ The imposed sentences were not excessive, and Martin has not shown that the trial court did not consider the statutory factors. The first assignment of error is overruled.

In his second assignment of error, Martin pro se argues that the trial court lacked jurisdiction to impose sentences for the apartment-search cocaine-possession offenses charged in counts three and four of the indictment and to order that those sentences be served consecutive to the sentence for trafficking in cocaine charged in count one. We disagree.

In *State v. Bezak*, the Ohio Supreme Court held that when “postrelease control is not properly included in a sentence for a particular offense, the sentence for that offense is void. The offender is entitled to a new sentencing hearing for that particular offense.”¹⁰ In this court’s December 2007 decision, we sustained Martin’s second assignment of error and held that the trial court had erred when it failed to provide the required notice of postrelease control when it imposed sentence on each felony count, including those for counts three and four.¹¹ We stated that “the sentences imposed for counts one, two, three, and four [were] void under the rule of *State v. Bezak*, and they ‘must be vacated and the matter remanded to the trial court for resentencing. The trial court must resentence the

⁷ *State v. Moore*, 1st Dist. No. C-070421, 2008-Ohio-4116, ¶14.

⁸ See *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

⁹ See *State v. Boggs*, 1st Dist. No C-050946, 2006-Ohio-5899, ¶6; see, also, *State v. Hairston*, 118 Ohio St.3d 289, 2008-Ohio-2338, 888 N.E.2d 1073, syllabus.

¹⁰ 2007-Ohio-3250, syllabus.

¹¹ See *State v. Martin*, 2007-Ohio-6662, at ¶7 and ¶11.

offender as if there had been no original sentence.’ ”¹² In response to our mandate to resentence Martin, the trial court had the authority to impose any sentence permitted by law. The second assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

PAINTER, P.J., SUNDERMANN and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on January 28, 2009

per order of the Court _____.
Presiding Judge

¹² Id. at ¶11, quoting *State v. Bezak* at ¶16.