

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

STATE OF OHIO,	:	APPEAL NO. C-100027
	:	TRIAL NO. B-0604655
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
RODRIQUEZ MADARIS,	:	
	:	
Defendant-Appellant.	:	

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

Following a jury trial, defendant-appellant Rodriguez Madaris was convicted of aggravated robbery, an accompanying weapon specification, and robbery. The trial court imposed ten years' imprisonment for the offense of aggravated robbery, a consecutive three years' imprisonment on the weapon specification, and a consecutive five years' imprisonment for the offense of robbery. That resulted in an aggregate sentence of 18 years' imprisonment. Madaris appealed to this court. We affirmed Madaris' convictions and sentences. But we later granted Madaris' motion to reconsider, concluding that he had to be resentenced based on the Ohio Supreme Court's decision in *State v. Cabrales* because the offenses of aggravated robbery and robbery were allied offenses of similar import.²

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

² *State v. Cabrales*, 118 Ohio St.3d 54, 2008-Ohio-1625, 886 N.E.2d 181.

The trial court held a resentencing hearing and imposed an aggregate sentence of 10 years' imprisonment. This included seven years' imprisonment for the offense of aggravated robbery and a consecutive three years' imprisonment for the weapon specification. Madaris has now appealed from the trial court's resentencing. He raises two assignments of error for our review.

In his first assignment of error, Madaris cites *State v. Colon*³ and argues that his indictment was defective because it failed to state a mens rea for the offenses of aggravated robbery and robbery. But this assignment of error raises an issue that is not properly before us for review. We have already reviewed Madaris' convictions in his first appeal, and we need not address an argument that could have been properly raised in that appeal.⁴ But even if Madaris' argument had been properly raised, it would be without merit. In *State v. Horner*, the Ohio Supreme Court recently held that "when an indictment fails to charge a mens rea element of the crime, but tracks the language of the criminal statute describing the offense, the indictment provides the defendant with adequate notice of the charges against him and is, therefore, not defective."⁵ *Horner* explicitly overruled *Colon*.⁶ In this case, Madaris' indictment tracked the language of the criminal statutes describing the offenses with which he was charged. His indictment was not defective. Consequently, we overrule Madaris' first assignment of error.

In his second assignment of error, Madaris argues that the sentence imposed by the trial court was contrary to law. We disagree. The Ohio Supreme Court has clarified

³ *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624, 885 N.E.2d 917, overruled by *State v. Horner*, ___ Ohio St.3d ___, 2010-Ohio-3830.

⁴ *Hubbard ex rel. Creed v. Sauline* (1996), 74 Ohio St.3d 402, 404-405, 1996-Ohio-174, 659 N.E.2d 781.

⁵ *State v. Horner*, ___ Ohio St.3d ___, 2010-Ohio-3830, ¶45.

⁶ *Id.* at ¶54.

an appellate court's role with respect to the review of sentences in *State v. Kalish*.⁷ *Kalish* established that a reviewing court must first determine whether the sentences imposed were clearly and convincingly contrary to law. If they were not, the court must then determine whether the trial court abused its discretion when imposing the sentences.⁸ Madaris' sentences fell within the available statutory ranges and were not contrary to law. And we cannot conclude that the trial court abused its discretion when imposing the sentences. We note that Madaris actually received a lesser sentence for the offense of aggravated robbery following resentencing. The trial court did not err in the imposition of sentence, and Madaris' second assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

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.

CUNNINGHAM, P.J., HENDON and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on September 24, 2010

per order of the Court _____.

Presiding Judge

⁷ 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124.

⁸ Id. at ¶14-17.