

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,  
Appellee

: Case No. C-090509  
: Trial Nos. B-0809422-A & B-0809621  
:

vs.

:  
: 10-0698  
:

VINCENT SPEARS,  
Appellant

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:  
:

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APPEAL FROM THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT  
HAMILTON COUNTY, OHIO

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MEMORANDUM OF APPELLANT  
IN SUPPORT OF JURISDICTION

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SUPREME COURT OF OHIO

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## ISSUES OF THIS CASE ARE OF GREAT PUBLIC INTEREST

This matter raises questions of great public interest concerning sentencing.

## STATEMENT OF THE CASE AND PROCEDURAL POSTURE

On November 29, 2009 in Case No. B-0809422-A, Vincent Spears robbed Craig Behler and Anuj Mankad. On December 8, 2009 in Case No. B-0809621, he robbed Daniel Hamner and Edward Clark with a gun and possessed a firearm while under a disability.

Mr. Spears was indicted for 2 counts of aggravated robbery and 2 counts of robbery in Case No. B-0809422-A on December 5, 2008; in Case No. B-0809621, he was indicted for 2 counts of aggravated robbery with gun specifications, 2 counts of robbery, 2 counts of abduction, and 1 count of having weapons while under disability on December 16, 2008. On April 14, 2009, Mr. Spears pled guilty to 2 counts of robbery in Case No. B-0809422-A; and he pled guilty to 2 counts of aggravated robbery with gun specifications and 1 count of having weapons while under disability in Case No. B-0809621. All other charges were dismissed by the State. Mr. Spears was sentenced to a total of 3 years in Case No. B-0809422-A and 16 years on Case No. B-0809621, consecutive, for a total of 19 years on May 13, 2009. A motion for leave to appeal was granted by the First District Court of Appeals on August 19, 2009. A Decision affirming the judgment of the trial court was entered on March 31, 2010 by the First District Court of Appeals; it is from that Decision which Appellant appeals.

## FIRST ASSIGNMENT OF ERROR AND PROPOSITION OF LAW

The trial court erred to the prejudice of Appellant by imposing a sentence that is contrary to law because it was excessive.

Sentences in Ohio courts are controlled by R.C. Sections 2929.11 through 2929.14.

Under Section 2929.12, a trial court initially considers the seriousness of the crime and the

likelihood of recidivism. The court then considers and is guided by the degree of the felony in determining whether to impose a prison term under Section 2929.13. Under Section 2929.14, the court is guided by the basic range of prison terms. Mr. Spears' convictions were for 2 felonies of the first degree, carrying 3-10 years each; 2 felonies of the second degree, carrying 2-8 years each; and 1 felony of the third degree, carrying 1-5 years. Finally, there is a preference for community control for felonies of the fourth or fifth degree.

In the case at bar, the trial court sentenced Mr. Spears to consecutive sentences in each case, for a total of 19 years; that was above the maximum sentence for the most serious of Mr. Spears' offenses, that being a felony of the first degree with a maximum sentence of 10 years. See R.C. Section 2953.08©. This sentence, although within the sentencing range and not contrary to law, was an abuse of the trial court's discretion, as it was erroneous and excessive. See State v. Kalish (Ohio 2008), 120 Ohio St.3d 23, 896 N.E.2d 124, 2008 Ohio 4912. The trial court erred in sentencing Mr. Spears. Therefore, Mr. Spears' sentence should be vacated or modified by this Court.

#### CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court take jurisdiction of this matter.

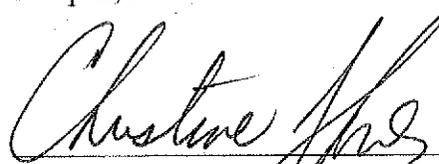
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was personally served upon Scott M. Heenan,  
Hamilton County Assistant Prosecutor, this 20<sup>th</sup> day of April, 2010.

  
\_\_\_\_\_  
Christine Y. Jones #0055225  
Attorney for Appellant

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

STATE OF OHIO,

Plaintiff-Appellee

vs.

VINCENT SPEARS,

Defendant-Appellant.



APPEAL NO. C-090509  
TRIAL NOS. B-0809422  
B-0809621

*JUDGMENT ENTRY.*

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

Defendant-appellant, Vincent Spears, appeals the judgment of the Hamilton County Court of Common Pleas sentencing him to an aggregate term of 19 years' imprisonment for two counts of aggravated robbery with firearm specifications, two counts of robbery, and one count of having a weapon while under a disability. He was convicted of the offenses after entering guilty pleas.

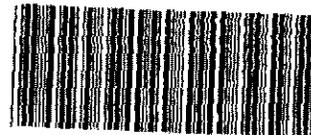
In a single assignment of error, Spears now argues that the trial court imposed an excessive sentence.

Under *State v. Foster*,<sup>2</sup> trial courts have full discretion to impose a sentence within the statutory range. In this case, Spears committed the aggravated robberies while out on bond for the robbery charges, and he kicked two of the victims while

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

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



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**OHIO FIRST DISTRICT COURT OF APPEALS**

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holding them at gunpoint. Under these circumstances, the trial court did not abuse its discretion in imposing the 19-year prison term.

Although Spears emphasizes that the aggregate sentence exceeded the maximum sentence for the most serious offense for which he was convicted, that factor, standing alone, did not render the sentence excessive.<sup>3</sup> Accordingly, we overrule the assignment of error and affirm the judgment of the trial court.

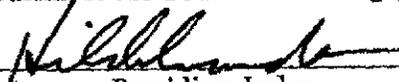
Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., DINKELACKER and MALLORY, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on March 31, 2010

per order of the Court

  
Presiding Judge

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<sup>3</sup> See *State v. Johnson*, 174 Ohio App.3d 130, 2007-Ohio-6512, 881 N.E.2d 289, ¶17, jurisdictional motion overruled, 117 Ohio St.3d 1497, 2008-Ohio-2028, 885 N.E.2d 955.

