[Cite as *State v. Mathis*, 2009-Ohio-2862.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO	C.A. No. 24549
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
LANCE K. MATHIS	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellant	CASE No. CR 04 01 0135(A)

DECISION AND JOURNAL ENTRY

Dated: June 17, 2009

WHITMORE, Judge.

{¶1} Defendant-Appellant, Lance Mathis, appeals from his resentencing in the Summit County Court of Common Pleas. This Court affirms.

I

{¶2} On October 18, 2006, Mathis was found guilty of one count of trafficking in marijuana in violation of R.C. 2925.03(A)(2) and one count of possession of marijuana in violation of R.C. 2925.11(A), both second-degree felonies. Mathis was sentenced to eight years incarceration on each count. Both sentences were to run concurrently. We affirmed his convictions on May 16, 2007. *State v. Mathis*, 9th Dist. No. 23507, 2007-Ohio-2345 ("*Mathis I*"). On August 14, 2007, Mathis filed a motion to reopen his appeal, which this Court granted, alleging that he received ineffective assistance of counsel. On August 13, 2009, we concluded that, given the facts of his case, Mathis's convictions for trafficking in marijuana and possession of marijuana were allied offenses of similar import. We further determined that Mathis's

counsel was ineffective because his counsel failed to object to him being sentenced on both counts. *State v. Mathis*, 9th Dist. No. 23507, 2008-Ohio-4077 ("*Mathis II*"). Accordingly, we remanded the case to the trial court for "proceedings consistent with this opinion." Id. at ¶9. Upon remand, the trial court merged the possession count into the trafficking count and resentenced Mathis to eight years incarceration on the trafficking count.

{¶3} With the assistance of counsel, Mathis appealed his resentencing, asserting one assignment of error. Mathis also filed, pro se, an untimely supplemental brief asserting a second assignment of error in contravention of requirements set forth in App.R. 16. Accordingly, our review is limited to his timely filed brief asserting one assignment of error.

II

Assignment of Error

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN RESENTENCING THE APPELLANT BECAUSE THIS COURT REVERSED HIS CONVICTION IN ITS AUGUST 13, 2008 OPINION."

{¶4} In his sole assignment of error, Mathis argues that, by sustaining his assignments of error in *Mathis II*, this Court reversed both of his convictions. Accordingly, Mathis argues that the trial court lacked jurisdiction to resentence him, and further, that he should be released from incarceration. We disagree.

{¶5} Initially, we note that Mathis has not cited to any authority, statutory or otherwise, in support of his claim that the result of our determination in *Mathis II* could somehow be construed as having vacated both his convictions and sentences for marijuana possession and trafficking. App.R. 16(A)(7). Additionally, we look to the express language employed by this Court in deciding *Mathis II*, where we stated that Mathis was challenging "the effective assistance of trial counsel *** [based on his counsel's failure to] object to the trial court

sentencing him for both allied offenses of similar import." (Emphasis added.) *Mathis II* at ¶4. Mathis mistakenly equates this Court's decision in *Mathis II* as effectively vacating his convictions and sentences for both the possession and trafficking counts lodged against him; it did not.

{¶6} It is clear from the Supreme Court's disposition of cases where a defendant's convictions constitute allied offenses of similar import, the proper manner of resolving such error is to reverse the conviction and remand the case for resentencing on only one of the offenses. *State v. Winn*, 121 Ohio St.3d 413, 2009-Ohio-1059, at ¶25 (concluding that "[t]he appellate court properly merged [the defendant's] kidnapping conviction into his aggravated-robbery conviction and *vacated the separate sentence* imposed on the kidnapping charge") (Emphasis added.); *State v. Brown*, 119 Ohio St.3d 447, 2008-Ohio-4569, at ¶40 (concluding that, when charged with an aggravated assault offense in violation of both R.C. 2903.12(A)(1) and (A)(2), a defendant can be "convicted of and sentenced only *for one offense* of aggravated assault") (Emphasis added.); *State v. Cabrales*, 118 Ohio St.3d 54, 2008-Ohio-1625, at ¶30-31 (affirming the trial court's conclusion that the defendant could not be sentenced for both possession of a controlled substance under R.C. 2925.11(A) and trafficking in a controlled substance under R.C. 2925.03(A)(2)). Likewise, this Court and others have been consistent in maintaining that, when the evidence supports a conclusion that two offenses that have sufficiently similar elements such that the commission of one crime will result in the commission of the other and that the offenses were committed with a single animus, a defendant can only be convicted of and sentenced on one offense. See, e.g., *State v. Goss*, 8th Dist. No. 91160, 2009-Ohio-1074, at ¶23 (concluding that possession and trafficking of crack cocaine were allied offenses and "remand[ing] [the] matter in order that the trial court may impose only one conviction and one sentence for the[]

two offenses"); *State v. Johnson*, 4th Dist. No. 07CA3148, 2008-Ohio-2646, at ¶18 (determining that the trial court erred in convicting the defendant on trafficking and possession of cocaine and trafficking and possession of crack cocaine and ordering that "two of the [four] convictions must be vacated"); *State v. Palmer*, 178 Ohio App.3d 192, 2008-Ohio-4604, at ¶15 (concluding it was error to "sentence[] [the defendant] for both aggravated robbery and robbery" because they are allied offenses); and *State v. Hadi* (Mar. 20, 1996), 9th Dist. No. 17294, at *3-5 (concluding the counts of felonious assault and child endangering were allied offenses and reversing and remanding for resentencing accordingly on one offense). Thus, it is evident from this Court's opinion in *Mathis II* that we did not vacate Mathis's conviction and sentence on *both* counts. Rather, we concluded that Mathis could only be convicted of and sentenced for one count, either marijuana possession or trafficking, but not both. Accordingly, the trial court did not err in merging Mathis's possession count into his trafficking count and resentencing him to eight years incarceration. Therefore, Mathis's sole assignment of error lacks merit.

III

{¶7} Mathis's sole assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

DICKINSON, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

JANA DeLOACH, Attorney at Law, for Appellant.

SHERRI BEFAN WALSH, Prosecuting Attorney, and HEAVEN DIMARTINO, Assistant Prosecuting Attorney, for Appellee.