

Circuit Court for Baltimore City  
Case Nos. 202036002-04

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 69

September Term, 2023

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JAMES BROWN

v.

STATE OF MARYLAND

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Friedman,  
Shaw,  
Meredith, Timothy E.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: September 5, 2023

\*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

\*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

James Brown, appellant, appeals from the denial, by the Circuit Court for Baltimore City, of a motion to correct illegal sentence. For the reasons that follow, we shall affirm the judgment of the circuit court.

On September 12, 2002, Mr. Brown was convicted in circuit court case number 202036002 (hereinafter “002”) of robbery with a dangerous and deadly weapon and related offenses, in circuit court case number 202036003 (hereinafter “003”) of first degree burglary and related offenses, and in circuit court case number 202036004 (hereinafter “004”) of first degree assault and second degree assault. The court subsequently sentenced Mr. Brown to a term of imprisonment of twenty years, all but fifteen years suspended, for the first degree burglary in case number 003, a consecutive term of imprisonment of twenty years, all suspended, for the robbery with a dangerous and deadly weapon in case number 002, and a consecutive term of imprisonment of ten years, all suspended, for the first degree assault in case number 004. The court merged the remaining convictions. On appeal, this Court reversed the conviction of first degree assault in case number 004. *Brown v. State*, No. 2082, September Term, 2002 (filed August 7, 2003). The circuit court subsequently reduced the term of imprisonment in case number 004 to five years, all suspended.

In 2011, Mr. Brown was charged in case numbers 002 through 004 with violation of probation. On January 10, 2013, Mr. Brown was convicted in the Circuit Court for Worcester County, case number 23-K-12-000401, of first degree burglary and related offenses. The court sentenced Mr. Brown to a total term of imprisonment of twenty years. On February 1, 2013, Mr. Brown was convicted in the Circuit Court for Worcester County, case number 23-K-12-000402, of third degree burglary. The court sentenced Mr. Brown

to a term of imprisonment of ten years, to be served concurrently with the sentence in case number 23-K-12-000401. On May 6, 2013, Mr. Brown was convicted in the Circuit Court for Worcester County, case number 23-K-12-000620, of attempted subordination of perjury. The court sentenced Mr. Brown to a term of imprisonment of 115 days, to be served concurrently with any sentence that he was then serving.

On August 27, 2013, Mr. Brown appeared in the Circuit Court for Baltimore City and admitted to being in violation of probation. With respect to sentencing, the court stated: “The case ending in ‘002, the sentence is 15-years consecutive to the sentence he’s now serving. The case ending in ‘003, the sentence is five-years consecutive to ‘002 for a total of 20 years.”

On November 12, 2021, Mr. Brown filed the motion to correct illegal sentence, in which he contended that the court erred in ordering that he serve the sentence for case number 003 consecutive to the sentence for case number 002, and in ordering that he serve the sentences consecutive to the term of imprisonment of twenty years imposed by the Circuit Court for Worcester County in case number 23-K-12-000401. Mr. Brown further contended that the Circuit Court for Baltimore City erred in failing to “give a . . . start date and . . . make it clear as to what sentence [it] was making the [sentences for violation of probation] consecutive to.” The court denied the motion.

Mr. Brown contends that, for two reasons, the court erred in denying the motion. He first contends that by ordering that he serve the sentence in case number 003 consecutive to the sentence in case number 002, and that he serve the sentences consecutive to the term of imprisonment of twenty years imposed by the Circuit Court for Worcester

County in case number 23-K-12-000401, the Circuit Court for Baltimore City illegally “increased [his] sentence.” We disagree. Although the court originally ordered the sentence in case number 002 to run consecutive to the sentence in case number 003, Mr. Brown does not cite any authority that prohibited the court, in sentencing him for violation of probation, from ordering that the sentence in case number 003 run consecutive to the sentence in case number 002. Also, we have long held that when a judge “revoke[s] a defendant’s] probation and thereby revoke[s] the suspension of the execution of the earlier imposed sentence of incarceration,” the judge has “the unfettered prerogative to make that reinstated sentence of incarceration either concurrent with or consecutive to” a previously imposed term of imprisonment. *DiPietranonio v. State*, 61 Md. App. 528, 535 (1985). Hence, the court did not “increase” Mr. Brown’s sentence.

Mr. Brown next contends that in sentencing him for violation of probation, the court erred in failing to “give a sentence start date and . . . make it clear as to what sentence [it] was making the [sentence for violation of probation] consecutive to.” We disagree. The declaration of a “start date” for a sentence has no effect when, as here, a court expressly orders that a sentence run consecutive to an outstanding and unserved sentence. Also, at the August 27, 2013 hearing, the State expressly requested that the court order its sentence for violation of probation to “run . . . consecutive to any outstanding and unserved sentences,” and Mr. Brown expressly acknowledged that his total term of imprisonment for the convictions in the Circuit Court for Worcester County was twenty years. In sentencing Mr. Brown, the court expressly stated that it did “not believe [that] a concurrent sentence would be appropriate,” and the court’s commitment record expressly states that

the total term of imprisonment for violation of probation is “to run . . . consecutive to the last sentence to expire of all outstanding and unserved Maryland sentences.” We conclude from these circumstances that the court intended to run its sentences for violation of probation consecutive to the sentence of twenty years imposed by the Circuit Court for Worcester County in case number 23-K-12-000401, and hence, the Circuit Court for Baltimore City did not err in denying the motion to correct illegal sentence.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**