

Circuit Court for Worcester County
Case No. C-23-CR-19-000168

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0109

September Term, 2020

ELIZABETH BLAIR REDDING

v.

STATE OF MARYLAND

Reed,
Beachley,
Adkins, Sally D.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: August 17, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On July 23, 2019, Elizabeth Blair Redding (“Appellant”) was arrested and charged with possession of fentanyl, distribution of fentanyl, and involuntary manslaughter. Pursuant to an agreement with the State, Appellant entered a guilty plea to distribution of fentanyl and the State entered a *nolle prosequi* to the remaining charges. After a sentencing hearing on November 14, 2019, Appellant received a sentence of twenty years, with all but ten years suspended, and five years’ supervised probation. On February 7, 2020, Appellant filed a Motion for Modification of her sentence, alleging, *inter alia*, that the twenty-year sentence was illegal under the circumstances. Appellant’s Motion was denied on March 12, 2020 and this appeal followed.

In bringing her appeal, Appellant presents the following questions for appellate review, which we have rephrased¹:

- I. Did the sentencing court err in rendering the maximum sentence for distribution instead of remaining within the maximum sentence for manslaughter?
- II. Did the sentencing court err and thus render an illegal sentence by considering the underlying facts of the State’s involuntary manslaughter charge?

For the following reasons, we answer both in the negative and affirm the sentence rendered by the circuit court.

¹ Appellant presents the following questions:

1. Whether, under this factual scenario, the sentencing court is constrained by the maximum penalty for manslaughter?
2. Whether, under the circumstances, the sentencing court is entitled to consider the facts underlying the State’s charge of involuntary manslaughter, and having so considered those facts, Appellant’s sentence is, therefore, illegal?

FACTUAL & PROCEDURAL BACKGROUND

On March 21, 2019, Elizabeth Blair Redding (“Appellant”) shared fentanyl with Nicholas Gattuso who overdosed and subsequently died March 23, 2019. On July 23, 2019, Appellant was arrested and charged with possession of fentanyl, distribution of fentanyl, and involuntary manslaughter. Pursuant to an agreement with the State, Appellant entered a guilty plea to distribution of fentanyl and the State entered a *nolle prosequi* to the remaining charges. After a sentencing hearing on November 14, 2019, Appellant received a sentence of twenty years, with all but ten years suspended, and five years’ supervised probation. On February 7, 2020, Appellant filed a Motion for Modification of her sentence, alleging, *inter alia*, that the twenty-year sentence was illegal under the circumstances. Appellant argued in her Motion that because she was charged with involuntary manslaughter and distribution, the distribution charge should have merged into the manslaughter charge, resulting in a sentence limited to the maximum penalty for manslaughter which is ten years imprisonment. Appellant also argued that because she was not convicted of involuntary manslaughter, consideration of Mr. Gattuso’s death was impermissible and resulted in an illegal sentence. Appellant’s Motion was denied on March 12, 2020.

STANDARD OF REVIEW

We review the denial of a motion to correct an illegal sentence *de novo*. *Bailey v. State*, 464 Md. 685, 696 (2019). Under Maryland law, a sentencing court is afforded with “virtually boundless discretion” in devising a sentence. *Cruz-Quintanilla v. State*, 455 Md. 35, 39 (2017) (quoting *Smith v. State*, 308 Md. 162, 166 (1986)) (internal quotations

omitted). This discretion is vested in the sentencing court to achieve the “objectives of sentencing – punishment, deterrence, and rehabilitation.” *Id.* (quoting *Smith v. State*, 308 Md. at 166). In reaching its decision, the sentencing court is not constrained to the narrow issue of guilt. *Id.* Rather, “in exercising that discretion, the sentencing judge may take into account the defendant’s reputation, prior offenses, health, habits, mental and moral propensities, and social background.” *Jackson v State*, 364 Md. 192, 199 (2001). Thus, this Court reviews a defendant’s sentence rendered by a trial court for abuse of discretion. *Sharp v. State*, 446 Md. 669, 685 (2016). In doing so, we review for the following: “(1) whether the sentence constitutes cruel and unusual punishment or violates other constitutional requirements; (2) whether the sentencing judge was motivated by ill-will, prejudice, or other impermissible considerations; and (3) whether the sentence is within statutory limits.” *Jones v. State*, 414 Md. 686, 693 (2010) (citing *Jackson*, 364 Md. at 200).

DISCUSSION

A. Parties’ Contentions

Appellant contends that her sentence is illegal because it should have been limited to the maximum penalty for involuntary manslaughter based on the doctrine of merger. Appellant asserts that the sentencing court abused its discretion in considering the death of Nicholas Gattuso when imposing the sentence. The State argues the doctrine of merger is inapplicable because Appellant was only convicted of distribution so there is no other charge to merge. The State contends further that the sentencing court was well within its discretion when considering the circumstances and consequences of the crime Appellant was charged with, even if those circumstances support uncharged conduct.

B. Analysis

I. Applicability of the Merger Doctrine

In her Rule 4-345 Motion for Modification, Appellant cited *Tolen v. State*, 242 Md. App. 288 (2019) to assert her sentence of twenty years is illegal. In that case, Ms. Tolen shared fentanyl and heroin with the victim who subsequently died of an overdose. *Tolen*, 242 Md. App. at 291-92. Appellant misstates that Ms. Tolen was found guilty by a jury. In fact, similar to this case, Ms. Tolen pled guilty to distribution of heroin *and* the additional charge of involuntary manslaughter. *Id.* at 295 (emphasis added). Finding that merger did not apply under the required evidence test and rejecting an argument that it violated fundamental fairness, the circuit court sentenced Ms. Tolen “to ten years, with all but seven years suspended, for involuntary manslaughter, and a concurrent fifteen years, all but seven years suspended, for distribution of heroin; all to be followed by three years of supervised probation.” *Id.* at 297. On appeal, this Court held the distribution of heroin conviction served as the “unlawful act” element of involuntary manslaughter and should have merged into the manslaughter conviction under the required evidence test. *Id.* at 310. Accordingly, Ms. Tolen received an illegal sentence and under Rule 4-345(a), this Court vacated the sentence for distribution of heroin. *Id.*

“The merger of convictions for purposes of sentencing derives from the protection against double jeopardy afforded by the Fifth Amendment of the federal Constitution and by Maryland common law.” *Brooks v. State*, 439 Md. 698, 737 (2014) (citing *Nicholas v. State*, 426 Md. 385, 400 (2012)). The objective of merger is to protect defendants from multiple punishments for the same offense. *Id.* A defendant’s sentences for two convictions

must merge when: “(1) the convictions are based on the same act or acts, and (2) under the required evidence test, the two offenses are deemed to be the same, or one offense is deemed to be the lesser included offense of the other.” *Id.* Failure to merge multiple convictions for the same offense under the required evidence test constitutes an illegal sentence. *Pair v. State*, 202 Md. App. 617, 625 (2011).

Appellant argues because the facts of the present case and *Tolen* are “hauntingly similar,” Appellant’s sentencing should have been limited to the maximum penalty for manslaughter – ten years’ incarceration. This argument is not supported by the facts or case law Appellant cites. Appellant blatantly ignores the essential fact that Ms. Tolen was, in fact, convicted of distribution of heroin *and* manslaughter. This is a critical distinction that cannot be minimized or ignored in our analysis. As the State points out, reliance on the merger doctrine is futile when there is nothing to merge. In her Motion for Modification, Appellant confirms the State entered a *nolle prosequi* to the involuntary manslaughter charge and at the sentencing hearing, the State offered no facts “to support a charge, much less a conviction, of involuntary manslaughter.” No facts were presented, and no consideration was given to the charge of involuntary manslaughter because that is not what Appellant pled guilty to and was subsequently convicted of. Sentencing was rendered for one conviction, and one conviction only; distribution of fentanyl.

Appellant also raises the concept of “fundamental fairness,” arguing it is unfair that in *Tolen*, Ms. Tolen received a sentence of ten years after pleading guilty to distribution and manslaughter while Appellant received a sentence of twenty years after pleading guilty to only distribution. “Maryland recognizes three grounds for merging a defendant’s

convictions: (1) the required evidence test; (2) the rule of lenity; and (3) ‘the principle of fundamental fairness.’” *Carroll v. State*, 428 Md. 679, 693-94 (2012) (quoting *Monoker v. State*, 321 Md. 214, 222-23 (1990)). As we explained, there are no multiple punishments to merge. The statute clearly allows the sentence imposed.² “It is not fundamentally unfair to impose a sentence authorized by the legislature.” *White v. State*, 250 Md. App. 604, 627 (2021). For these reasons, we reject Appellant’s argument that her sentence should be reversed on grounds of fundamental fairness.

II. Consideration of Gattuso’s Death Absent Manslaughter Charge

Appellant’s Motion for Modification also asserted the State failed to show any evidence of “gross negligence” to support an involuntary manslaughter conviction and, thus, consideration of Mr. Gattuso’s death in sentencing resulted in an illegal sentence. We disagree. As stated *supra*, a sentencing court is not constrained to the narrow issue of guilt; the court “may take into account the defendant’s reputation, prior offenses, health, habits, mental and moral propensities, and social background.” *Jackson*, 364 Md. 192, 199 (2001). The sentencing court thoroughly considered *all* the facts and circumstances of the crime at sentencing, including Appellant’s history of addiction and the multiple times she has

² Appellant pled guilty to distribution of fentanyl in violation of CR §5-602. The sentence for a conviction pursuant to CR §5-602 is set forth in CR §5-608(a), which provides in relevant part:

- (a) Except as otherwise provided in this section, a person who violates a provision of §5-602 through §5-606 of this subtitle with respect to a Schedule I or Schedule II narcotic drug is guilty of a felony and on conviction is subject to imprisonment not exceeding 20 years or a fine not exceeding \$15,000 or both.

received assistance through drug treatment programs. Indeed, the sentencing court would be remiss to consider Appellant's history but ignore the fate of Mr. Gattuso in its review of aggravating and mitigating factors:

In considering what is proper punishment, it is now well-settled in this State that a judge is not limited to reviewing past conduct whose occurrence has been judicially established, but may view "reliable evidence of conduct which may be opprobrious although not criminal, as well as details and circumstances of criminal conduct for which the person has not been tried."

Logan v. State 289 Md. 460, 481 (1981) (quoting *Henry v. State*, 273 Md. 131, 147-48 (1974)). Moreover, the circuit court diligently reviewed all the evidence presented about Appellant's mental health, addiction, and history within the criminal justice system:

I reviewed the 8-505 evaluation...[I] reviewed the juvenile drug treatment court discharge summary. I reviewed the adult drug treatment court discharge summary. I reviewed in its entirety the court's file including Mr. Wimbrow's motion on behalf of [Appellant]'s motion for pretrial release with emphasis being placed on the attached exhibits including a letter from Seaside Counseling...I saw the email from [Appellant's mother] and took to heart her recommendation that if you had not read the poem, *Take Me In Your Arms, Miss Heroin*, that you do so. So I found it online, printed it and read it as part of my materials this morning. I've now, this afternoon, heard five jail calls. And I've also received and reviewed the most recent Seaside Counseling letter which is dated November 12, 2019. I have received and now am considering all the comments from all those that are present today. And of course, I'm giving consideration to the one person who cannot be here today which is Nick Gattuso.

The record clearly shows a recitation by the circuit court of all the documents, statements, and arguments taken into consideration before sentencing. The circuit court expressed sympathy given the tragic situation and adequately considered alternatives to incarceration despite Appellant's unsuccessful history with drug treatment programs. It is clear to this Court that, under the circumstances of this case, the circuit court rendered a legal sentence.

CONCLUSION

Although Appellant was initially charged with possession of fentanyl, distribution of fentanyl, and involuntary manslaughter, she only pled guilty and was subsequently convicted of distribution of fentanyl. From the record and Appellant's own admission in her Motion for Modification, the State did not present evidence to support a conviction of involuntary manslaughter. The sentencing court was well within its discretion to sentence Appellant to the maximum penalty of twenty years imprisonment for a conviction of distribution. Without any second conviction to merge, the doctrine of merger is inapplicable to this case. The sentencing court also properly considered the death of Mr. Gattuso as an aggravating factor compared to the many mitigating factors referencing Appellant's struggle with addiction. Appellant's sentence does not constitute cruel and unusual punishment or violate other constitutional requirements, the sentencing judge was not motivated by ill-will, prejudice, or other impermissible considerations, and the sentence is within statutory limits. Accordingly, we hold Appellant received a legal sentence and affirm the circuit court.

**JUDGMENT OF THE CIRCUIT COURT
FOR WORCESTER COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**