

Circuit Court for Prince George's County
Case No.: CT061605X

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 124

September Term, 2021

RANDY EARL MCKEEVER

v.

STATE OF MARYLAND

Reed,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 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.

Following a 2007 trial in the Circuit Court for Prince George’s County, a jury found Randy Earl McKeever, appellant, guilty of voluntary manslaughter and use of a handgun in the commission of a felony.¹ The court sentenced him to 10 years’ imprisonment for voluntary manslaughter and to 20 consecutive years’ imprisonment for the handgun offense. This Court affirmed the judgments on direct appeal. *McKeever v. State*, No. 2233, Sept. Term, 2007 (filed unreported July 28, 2009). In 2020, appellant filed a motion to correct an illegal sentence which the court denied. Appellant noted an appeal from that denial.² For the reasons that follow, we shall affirm.

I.

Appellant contends that his sentence for voluntary manslaughter is illegal, within the contemplation of Maryland Rule 4-345, because, according to him, he was never charged with voluntary manslaughter.³ Appellant is mistaken.

¹ The jury acquitted appellant of first-degree murder and second-degree murder.

² It appears from the record that the order denying appellant’s motion to correct an illegal sentence is dated November 10, 2020, however there is no contemporaneous docket entry evidencing that the order was filed on that date. Apparently, at some point prior to March 22, 2021, when appellant noted this appeal, he became aware that the court denied his motion. In any event, on April 7, 2021, the circuit court made an entry on the docket indicating that it had sent a letter to appellant informing him that the court had denied his motion on November 10, 2020. The court also included a copy of the November 10, 2020 order with that letter. We will therefore treat the circuit court’s November 10, 2020 order as filed on April 7, 2021. Appellant’s notice of appeal is therefore timely. (*See* Maryland Rule 8-602(f) “A notice of appeal filed after the announcement or signing by the trial court of a ruling, decision, order, or judgment but before entry of the ruling, decision, order, or judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.”)

³ Consistent with *Douglas v. State*, 423 Md. 156, 182 (2011), we have liberally construed appellant’s *pro se* informal brief that he filed in this Court pursuant to Md. Rule 8-502(a)(9).

Appellant’s indictment charged him with first-degree murder utilizing the statutory “short-form” language found in Section 2-208 of the Criminal Law Article of the Maryland Code. When a person is charged with that statutory short-form language the person is charged with all forms of criminal homicide, including voluntary manslaughter. *Dishman v. State*, 352 Md. 279, 287–90 (1998). With that fundamental premise removed, appellant’s argument collapses under its own weight.

II.

Appellant contends that his sentence for voluntary manslaughter should have been made concurrent with, instead of consecutive to, his sentence for use of a handgun in the commission of a felony, because voluntary manslaughter is a lesser included offense of use of a handgun in the commission of a felony and the two offenses arose from the same transaction.

While it is true that the voluntary manslaughter offense is a lesser included offense of use of a handgun in the commission of a felony, because only one of those offenses contains an element that the other does not, *see Blockburger v. United States*, 284 U.S. 299 (1932), the General Assembly has authorized the imposition of a separate punishment for the handgun offense.⁴ Moreover, the provision authorizing a separate punishment has been approved by the Court of Appeals. *Whack v. State*, 288 Md. 137, 149 (1980).

⁴ The version of Section 4-204 of the Criminal Law Article applicable to appellant’s 2006 conduct provided:

- (a) A person may not use an antique firearm capable of being concealed on the person or any handgun in the commission of a crime of violence, as

(continued)

III.

Appellant contends that his sentences are illegal because he was sentenced as a subsequent offender and the State did not provide the notice required by Maryland Rule 4-245. Had appellant been sentenced as a subsequent offender, this argument could have had merit. However, appellant was not sentenced as a subsequent offender even though the sentencing court took appellant's criminal history into account when fashioning his sentence.

Consequently, we affirm the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

defined in § 5-101 of the Public Safety Article, or any felony, whether the antique firearm or handgun is operable or inoperable at the time of the crime.

(b)(1)(i) A person who violates this section is guilty of a misdemeanor and, *in addition to any other penalty imposed for the crime of violence or felony*, shall be sentenced to imprisonment for not less than 5 years and not exceeding 20 years.

(ii) The court may not impose less than the minimum sentence of 5 years and, except as otherwise provided in § 4-305 of the Correctional Services Article, the person is not eligible for parole in less than 5 years.

(2) For each subsequent violation, the sentence shall be consecutive to and not concurrent with any other sentence imposed for the crime of violence or felony.

Md. Code Ann., Crim. Law § 4-204 (West 2004) (emphasis added).