

Circuit Court for Montgomery County  
Case No: 131441C

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 156

September Term, 2019

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DARRELL ALLEN

v.

STATE OF MARYLAND

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Beachley,  
Shaw Geter,  
Moylan, Charles E., Jr.,  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: May 1, 2020

\*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.

Darrell T. Allen, appellant, was convicted by a jury in the Circuit Court for Montgomery County of sexual abuse of a minor (count 1) and third-degree sex offense (count 2). The court sentenced him to 25 years' imprisonment, all but 10 years suspended, for sexual abuse of a minor and to a consecutive term of 10 years' imprisonment for third-degree sex offense.

Following a hearing on his application for review of sentence, a three-judge panel orally announced that it had “voted to increase the sentence in this case” with the increase reflected in count 1. The panel pronounced that the sentence for sexual abuse of a minor was increased to 25 years' imprisonment, with all but 15 years suspended, and the “remaining count remains the same.” The written order that followed ordered that the sentence “shall be increased”; ordered “that for count 1, defendant shall now serve 25 years in the Department of Corrections, with all but 15 years suspended”; and further ordered “that all remaining counts shall remain the same.” Mr. Allen appeals that order as well as a subsequent decision of the circuit court denying his motion to correct an illegal sentence. We shall affirm the judgments.

Mr. Allen maintains that the docket entries and the commitment record reflect an illegal sentence. Specifically, he claims that, because the panel failed to articulate that the sentence for count 2 was to run consecutively to the increased sentence for count 1, by operation of law it runs concurrently therewith for a total sentence of 25 years, with all but 15 years suspended, rather than a total sentence of 35 years, with all but 25 years suspended. He asserts “the review panel’s new sentence on count 1 supplanted the sentence originally imposed” and, therefore, “it necessarily follows that the consecutive feature of

the sentence on count 2, which the panel stated ‘remained the same,’ was also vacated because it could not be ‘consecutive to’ a sentence that *no longer existed*.” He further contends that it was “incumbent upon the review panel to re-sentence [him] on both counts 1 and 2, by articulating not only the term of years imposed but whether the sentence on count 2 was consecutive to or concurrent with the *new* sentence imposed on count 1.” “In the absence of a pronouncement by the panel that the sentence on count 2 was to run consecutive to the sentence on count 1,” Mr. Allen maintains that, despite the panel’s intent, the legal effect is that “the sentence on count 2 is concurrent.”

The State responds that Mr. Allen’s “contention is the height of form over substance” and that “the panel was clear that the sentence on count 2 would remain unchanged,” which “necessarily includes the fact that it runs consecutively to count 1.” We agree with the State. By stating that the “remaining count shall remain the same,” the review panel clearly imposed the same sentence on count 2 that was originally imposed, that is, 10 years’ imprisonment, to run consecutively to count 1.

**JUDGMENTS OF THE CIRCUIT  
COURT FOR MONTGOMERY  
COUNTY AFFIRMED. COSTS TO  
BE PAID BY APPELLANT.**