Circuit Court for Prince George's County
Case No. CT160510X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 196

September Term, 2018

RONNELL D. HOLLIDAY

v.

STATE OF MARYLAND

Nazarian,
Shaw Geter,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: July 23, 2019

On October 28, 2015, Ronnell D. Holliday entered a house in College Park and stole an assortment of personal items from the six people who lived there. Mr. Holliday was still in the house when one of the residents, Ronald Yi, arrived home. Mr. Yi saw Mr. Holliday descend the stairs and flee out the open back door with items in his hands and decided to pursue him. After a brief chase and scuffle, Mr. Holliday left the scene, leaving behind what he had taken and some of his own belongings. Mr. Holliday was charged with first-, third-, and fourth-degree burglary, second-degree assault, and three counts of theft in the Circuit Court for Prince George's County. A jury convicted him of two counts of theft and three counts of burglary and acquitted him of the remaining charges.

Despite a dearth of evidence that Mr. Holliday had committed a breaking, Mr. Holliday's trial counsel did not move for judgment of acquittal on the burglary counts.[1] Mr. Holliday contends that the failure to move for judgment and preserve the issue for appeal deprived him of his Sixth Amendment right to effective assistance of counsel. Rather than bring his claim in a post-conviction proceeding, he urges us to review his claim on direct appeal. Because the error was so obvious and inexplicable, we will address his ineffective assistance claim on direct appeal, find that Mr. Holliday was deprived of effective assistance of counsel, and reverse his burglary convictions. We also find that he was sentenced illegally for one of his theft convictions,[2] and we vacate that sentence and

[1] Counsel did move unsuccessfully for a judgment of acquittal on one of Mr. Holliday's theft charges.

[2] He doesn't challenge the theft conviction itself, though, so that remains intact.

remand for further proceedings consistent with this opinion.

I. BACKGROUND

The testimony at Mr. Holliday's trial revealed that in 2015, Ronald Yi lived in a house in College Park with five roommates—three brothers, Michael, David, and Kevin Gu[3]; Joy Song, Michael Gu's girlfriend; and Zac Gayner, whom Mr. Yi described as "a random person living with us."

On October 28, 2015, Mr. Yi left for work at 8:00 a.m. At least two of his roommates were still home when he left. When Mr. Yi got home at around 5:00 that evening, he entered through the front door and saw a hooded man in dark clothing, later identified as Mr. Holliday, coming down the steps carrying several items. Mr. Yi did not recognize Mr. Holliday, and initially believed he might have been a friend of his "random roommate," Mr. Gayner. But Mr. Holliday did not respond when Mr. Yi called to him, and instead began "speed-walking toward the back door of the house," Mr. Yi concluded that Mr. Holliday was an intruder and that he was stealing the items he was carrying. So Mr. Yi followed Mr. Holliday outside, and continued calling out to him. When he still received no response, Mr. Yi caught up with Mr. Holliday and the two "engaged in a physical altercation." Mr. Holliday dropped what he had taken from the house and he and Mr. Yi "wrestled for a little bit." Mr. Yi yelled for help throughout.

Eventually, Mr. Yi's neighbors from two houses down "came running" to where the

[3] We will, for clarity and meaning no disrespect, refer to the Messrs. Gu by their first names.

men were scuffling. Mr. Yi got up from the ground and put his hands up. As Mr. Holliday attempted to stand, one of Mr. Yi's neighbors sprayed him with pepper spray. Mr. Holliday stumbled back, and reached towards his pocket. Mr. Yi, fearing he was reaching for a weapon, rushed at Mr. Holliday and grabbed his arm to prevent him from reaching his pocket. When he realized he could no longer control Mr. Holliday, Mr. Yi let go and ran off to hide. Mr. Yi then heard a car start.

When Mr. Yi walked back toward his house some time later, Mr. Holliday was gone. As Mr. Yi approached the house, he found the pile of items that Mr. Holliday had dropped prior to their scuffle. In the pile were several items that belonged to his roommates, including a box of watches, some Metro cards, and a Macbook laptop. Mr. Yi also found a pair of Dallas Cowboys gloves and a cell phone. As Mr. Yi picked everything up, the cell phone rang and he saw that the background image was "an old fashion[ed]" photograph of an African-American man. Mr. Yi took everything into the house and dropped it on the floor in the foyer.

Michael Gu and Ms. Song also testified at Mr. Holliday's trial. The other three roommates did not. Michael testified that he left for work at 8:00 the morning of the alleged burglary and that everything in the house was in "normal conditions." He arrived home at 8:00 p.m. and noticed that Mr. Yi had injuries on his body and on his face. When he heard what happened, Michael checked his bedroom to see if anything was missing and noted that his things had been moved around and that he was missing $2,200 in cash from a Ninja Turtle wallet.

Ms. Song left the house in the early evening on the day of the crime. When she left, the house was "the way it always is . . . clean . . . tidy and in order." When she returned, though, police were on the scene and the house had been "ransacked," and it looked like "someone was looking for things [] throughout the house." She testified that Mr. Yi looked "scuffled and [] had [] marks on his face and body." Ms. Song's Macbook laptop was on the foyer floor and was wet and "obviously had been outside." The laptop was dented, as though it had been dropped, and was not running properly. Ms. Song paid out of pocket to have it repaired.

About a month after the incident, Detective Marcus Clark of the Prince George's County Police Department conducted a double-blind photo identification with Mr. Yi. The Detective showed Mr. Yi a series of six photographs. He testified that Mr. Yi reviewed the photos for three minutes and spent the majority of that time focused on a picture of Mr. Holliday before identifying him as the intruder.

Sometime after the photo identification, Mr. Yi read Mr. Holliday's name on a court document and looked him up on Facebook. He found a profile for Ronnell Holliday that displayed the same photograph as the background on the cellphone the intruder had left behind. Mr. Yi also noticed a photograph on the Facebook profile that showed a pair of Dallas Cowboys gloves identical to the pair he had found alongside the cell phone.

Mr. Holliday's mother, Pamela Holliday, testified for the defense. She stated that she recognized the cell phone found at the crime scene as one that belonged to her son, but that he had lost it sometime before the crime. She confirmed that the man in the photograph

on the cell phone and on Mr. Holliday's Facebook page was Mr. Holliday's father, who had recently passed away. She also reported that Mr. Holliday is a Dallas Cowboys fan. Ms. Holliday was not aware of her son's whereabouts on the day of the crime.

After deliberating, the jury convicted Mr. Holliday of first-, third-, and fourth-degree burglary, one count of theft between $1,000 and $10,000[4] (the laptop), and one count of theft under $1,000. He was acquitted of second-degree assault and an additional count of theft. On March 8, 2018, Mr. Holliday was sentenced to 20 years' imprisonment for the first-degree burglary, ten years' imprisonment with all but five suspended for the theft over $1,000, to be served consecutively, and six months' imprisonment for the theft under $1,000 to be served concurrently. We supply additional facts as needed below.

II. DISCUSSION

Mr. Holliday argues *first* that the State failed to present sufficient evidence that he committed a breaking as required to sustain his burglary convictions.[5] Mr. Holliday's first

[4] The parties have stipulated that the laptop was worth $1,400.

[5] Mr. Holliday frames his questions presented as follows:

> 1. Was the evidence insufficient to convict Appellant of burglary?
>
> 2. Did the trial court commit plain error when it allowed the State in closing argument to misstate the law and misrepresent the facts pertaining to the burglary counts?
>
> 3. Must Appellant's sentence for theft of between $1,000 and $10,000 be reversed as it exceeds the maximum sentence for that offense permitted at the time of Appellant's sentencing hearing?

Because we answer Mr. Holliday's first question presented in the affirmative we need not address the second. (Continued…)

argument was not preserved in the circuit court, though, and he urges us to reach the issue through the lens of ineffective assistance of counsel. Because Mr. Holliday's sufficiency argument was not preserved, the State contends that we should not reach the merits of that argument at all, and that he should bring his ineffective assistance claim in a post-conviction proceeding rather than on direct appeal.

Mr. Holliday argues *second* that his "sentence for theft of between $1,000 and $10,000 must be reversed as it exceeds the maximum sentence for that offense permitted at the time of [his] sentencing hearing." The State concedes that Mr. Holliday's sentence is illegal, "but disputes the maximum sentence authorized by law."

We recognize that there are only narrow circumstances in which it is appropriate for us to address ineffective assistance claims without the benefit of additional fact-finding by a post-conviction court. But because in this case the question of the sufficiency of the evidence and the adequacy of trial counsel's representation are linked inextricably, we address the merits of Mr. Holliday's sufficiency argument, then assess whether this is an appropriate case to consider ineffective assistance on direct appeal.

The State frames its questions presented as follows:

> 1. Should this Court decline to review Holliday's unpreserved legal sufficiency claim under the guise of ineffective assistance of counsel?
>
> 2. If reviewed for plain error, did the State's closing argument remain within the bounds of permissible argument?
>
> 3. Should this Court vacate Holliday's sentence for felony theft?

A. The State Presented Insufficient Evidence Of A Breaking.

Mr. Holliday was charged with, and convicted of, first-degree burglary under Maryland Code (2002, 2012 Repl. Vol., 2018 Cum. Supp.) § 6-202(a) of the Criminal Law Article ("CR"), which prohibits "break[ing] and enter[ing] the dwelling of another with the intent to commit theft." He also was convicted of two additional burglary counts under CR § 6-204(a) (third-degree burglary) and CR § 6-205(a) (fourth-degree burglary). Mr. Holliday alleges that the State failed to present evidence that he committed a "breaking," a required element of burglary in all of its forms. We will find evidence legally insufficient if "after viewing the evidence in the light most favorable to the prosecution, [*no*] rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Albrecht*, 336 Md. 475, 479 (1994) (*quoting Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979)).

The breaking element of statutory burglary retains its common law meaning. *Jones v. State*, 395 Md. 97, 119 (2006). A breaking can be constructive, which "involves entry gained by artifice, fraud, conspiracy, or threat," or an actual breaking, which the Court of Appeals defines as "unloosing, removing or displacing any covering or fastening of the premises. It may consist of lifting a latch, drawing a bolt, raising an unfastened window, turning a key or knob, [or] pushing open a door kept closed merely by its own weight." *Id.* (internal quotations and citations omitted). "[I]t is not a breaking to enter through an *open* door or window" *Reagan v. State*, 2 Md. App. 262, 268 (1967) (emphasis added), and "[t]here is no 'breaking' if a person has a right to enter or if he enters with the consent of

the owner." *Martin v. State*, 10 Md. App. 274, 279 (1970).

Time and again, our appellate courts have reversed burglary convictions on sufficiency grounds when the State has failed to present evidence of breaking. *See, e.g.*, *Jones v. State*, 395 Md. at 119; *Oken*, 327 Md. 628, 663 (1992); *Williams v. State*, 342 Md. 724 (1996); *Reagan*, 2 Md. App. at 268. In *Jones v. State*, for example, the appellant was convicted of second-degree burglary for allegedly breaking into a school and stealing money from several nuns' bedrooms. 395 Md. at 119. Mr. Jones was found wandering the halls inside the school, and the State alleged that he had entered through a kitchen window that was found open after he was apprehended. *Id.* But the Court of Appeals reversed because there had been no evidence that the window had been "broken":

> The State offered no proof that [Mr. Jones] opened any window or door in order to enter [the school]. Although the State presented some evidence that the point of entry into the building was a kitchen window . . . there was no evidence presented that the window had been secured previously . . . . The State presented no evidence connecting [Mr. Jones] to the window, or that there was even an actual breaking.

Id.

Similarly, in *Reagan v. State*, a man came home to find three strangers in his apartment. 6 Md. App. 477, 479 (1969). They claimed at first to be repairmen, but fled when questioned further. We reversed the resulting burglary conviction because although there was evidence that some points of entry had been locked, there was "no testimony that the apartment had been 'secured' or that other doors and windows . . . had been locked or even closed," and no "evidence of physical tampering with any part of the building." *Id.* at 479. We held that "where there is no evidence of physical tampering or no evidence

showing directly or indirectly that the property was secured the evidence is not sufficient to show a breaking." *Id.* at 480.

Mr. Holliday argues, and the State does not dispute, that the evidence at trial was insufficient to prove a breaking.[6] We agree as well. Mr. Yi testified that when he left in the morning, at least two of his housemates were still at home, but he said nothing about closing or locking doors when he left. Michael Gu testified that he left the house around 8:00 a.m., "in normal conditions," having followed "the daily routine that [he] normally follow[ed]." But the State did not inquire, and Michael did not say, whether his normal routine included securing the house. He was the only witness who was asked "whether or not there was any exterior damage to the house, like any broken locks or windows," and he testified that there wasn't. Finally, Ms. Song testified that she left the house in the early evening and returned around 6:00 p.m. She testified that the home was clean and orderly when she left and had been ransacked by the time she returned, but, like her housemates, said nothing about closing or locking doors or windows or otherwise securing the house before she departed. The other three roommates were not called to testify at trial. Their whereabouts on the day of alleged burglary were unaccounted for, and the jury had no information about whether they left the house, when they left the house, or if they secured the premises when they did.

This record cannot support an inference that Mr. Holliday committed a breaking. We have found no case in which our Court or the Court of Appeals has "sustained a

[6] The State declined to address the merits of Mr. Holliday's sufficiency argument in its appellate brief. When pressed at oral argument, the State conceded that there was insufficient evidence of a breaking.

conviction where there was no evidence of physical tampering or no evidence indicating that the premises had been secured when the last lawful occupant left the premises." *Reagan*, 6 Md. App. at 480. And there was no such evidence here. Mr. Holliday's mere presence in the home coupled with an open back door is not sufficient to demonstrate a breaking, especially when there was no evidence about the whereabouts of three residents and the record contains no evidence "showing directly or indirectly that the property was secured." *Reagan*, 6 Md. App at 480. We hold, therefore, that the evidence against Mr. Holliday was insufficient to support his three burglary convictions as a matter of law.

B. Mr. Holliday Received Ineffective Assistance Of Counsel At Trial.

Despite the absence of any evidence that he had committed a breaking, Mr. Holliday's counsel neglected to move for judgment of acquittal on the burglary charges, either at the close of the State's case or after the defense rested. Because there was no motion, the insufficiency argument wasn't preserved for review on appeal. Mr. Holliday urges us nevertheless to consider whether he was denied his right to effective assistance of counsel under the Sixth Amendment. The State counters that Mr. Holliday is attempting to end-run the preservation requirement and that he instead should seek relief through a petition for post-conviction relief, the normal vehicle for claims of ineffective assistance. We agree with the State that ineffective assistance claims should nearly always await post-conviction, but we also agree with Mr. Holliday that the record in this case allows us to decide the issue fully now.

The Sixth Amendment to the U.S. Constitution and Article 21 of the Maryland

Declaration of Rights guarantee defendants the right to effective counsel at all critical stages of a criminal case. *Strickland v. Washington*, 466 U.S. 668, 685 (1984); *Newton v. State*, 455 Md. 341, 362 (2017). Ineffectiveness claims require a two-part inquiry—defendants must establish *first*, that counsel's performance was deficient, and *second*, that the alleged deficiency was prejudicial. *See generally Strickland*, 466 U.S. 668 (1984). "To prove deficient performance, the defendant must identify acts or omissions of counsel that were not the result of reasonable professional judgment." *In re Parris W.*, 363 Md. 717, 725 (2001). Our review of counsel's performance is highly deferential, and we consider whether the attorney's challenged actions, even if ultimately detrimental to their client, were reasonable under the circumstances and the product of a strategic choice. *Strickland*, 466 U.S. at 690. "[T]here is a strong (but rebuttable) presumption that counsel rendered reasonable assistance and made all significant decisions in the exercise of reasonable professional judgment." *In re Parris W.*, 363 Md. at 725.

The State is right that we rarely consider ineffective assistance on direct appeal. *Testerman v. State*, 170 Md. App. 324, 335 (2006). This is because our review of counsel's decisions and their impact is limited by the trial record, which ordinarily "does not illuminate the basis for the challenged acts or omissions of counsel." *In re Parris W.*, 363 Md. at 726. Ineffective assistance claims are, therefore, ordinarily addressed in post-conviction proceedings, where the court can make findings of fact about the bases for counsel's decisions, analyze whether counsel's performance was deficient under the circumstances, and determine what effect any deficiencies had on the outcome of a case.

Alford v. State, 202 Md. App. 582, 605 (2011).

That said, an appellant "may raise the claim that he or she was denied effective assistance of counsel on direct review without the benefit of a post-conviction proceeding," *Mosley v. State*, 378 Md. 548, 564 (2003), and we may consider it on direct appeal when "the critical facts are not in dispute and the record is sufficiently developed to permit a fair evaluation of the claim[.]" *In re Parris W.*, 363 Md. at 726. Under those unusual circumstances, "a collateral evidentiary hearing on the adequacy of counsel's performance is unnecessary to develop a complete record of the basis for the challenged acts or omissions, and our refusal to address [the] claim [on] appeal would constitute a waste of judicial resources." *Id.* at 727.

Mr. Holliday's case falls within this rarely invoked, narrow exception to the general principle that ineffective assistance of counsel claims are reviewed most appropriately in a post-conviction setting. Our decision in *Testerman*[7] is instructive. 170 Md. App. at 324. In that case, the appellant was pulled over for suspicion of driving under the influence. *Id.* at 329. As police looked on, Mr. Testerman switched seats with the front seat passenger and, when asked, claimed he had not been driving. *Id.* Ultimately, Mr. Testerman admitted that

[7] The State attempts to distinguish *Testerman* on the ground that *Testerman* does not deal merely with the sufficiency of the evidence, but also involved statutory construction. Because *Testerman* involved a "pure legal question," the State claims, there was no need to develop the record on post-conviction. But the State offers no authority for the proposition that statutory construction is the only appropriate vehicle for direct review of an ineffective assistance claim. And although *Testerman* itself *does* involve statutory construction, we have found no cases that impose such a limitation, but have found some that reach the opposite conclusion. *See, e.g.*, *In re Parris W.*, 363 Md. at 717.

he had switched seats with his passenger in the hope of avoiding a DUI charge. *Id.* at 330. As a result of his attempted deception, though, Mr. Testerman was convicted of eluding a uniformed police officer. And as here, Mr. Testerman's trial counsel did not move for judgment of acquittal on sufficiency grounds, even though his behavior did not meet the statutory definition of "eluding." *Id.* at 340. He sought review of his unpreserved sufficiency claim in this Court on an ineffective assistance of counsel theory, *id.* at 342, and we agreed because the relevant record allowed us to do so:

> The critical facts are not in dispute here: [Mr. Testerman] changed seats with his front seat passenger after complying with a request by a police officer to stop his vehicle. And, since this issue was fully aired at trial, the record is sufficiently developed to permit a fair evaluation of [Mr. Testerman's] claim. Hence, we conclude that there is no need for a collateral fact-finding proceeding, and review of [Mr. Testerman's] claim by this Court would be appropriate and desirable.

Id. at 336 (*quoting In re Parris W.*, 363 Md. at 726) (cleaned up).

As in *Testerman*, the record in this case reveals unequivocally that an element common to all of the burglary counts was omitted altogether from the evidence presented at trial. It was the State's burden to prove beyond a reasonable doubt Mr. Holliday's guilt as to each element of the crime charged, and the State does not dispute that it failed to meet that burden at trial. *In re Winship*, 397 U.S. 358, 364 (1970). This leaves no doubt at all, based on the trial record alone, that the evidence was insufficient, and there is nothing further that could be brought out in a post-conviction proceeding that would bear that out.

The State contends that post-conviction proceedings still would allow a court to take testimony from Mr. Holliday's trial counsel about whether they elected not to move

for judgment of acquittal for some strategic reason. And it's true that Mr. Holliday must "overcome the presumption that [counsel's failure to move for judgment of acquittal] might . . . be considered a sound trial strategy," *Oken*, 343 Md. 256, 283 (1996). But that would be a lot more important if there were some possible strategic or tactical reason not to move for judgment on insufficiency grounds. "The standard by which counsel's performance is assessed is an objective one, and the assessment is made by comparison to prevailing professional norms." *In re Parris W.*, 363 Md. at 725. And although "[j]udicial scrutiny of counsel's performance is highly deferential," *id.*, there is, as Mr. Holliday argues here, "no conceivable trial strategy that could explain defense counsel's failure to preserve the issue of sufficiency for appellate review."

Criminal defense attorneys' primary objective at trial is to obtain a judgment of acquittal for their clients. In this case, where the State failed to establish a critical element of burglary, counsel had a strong, if not slam-dunk, motion for judgment as to the burglary charges. The error is even more puzzling in light of counsel's mention, during closing arguments, of the lack of evidence of a breaking. Trial counsel was aware of the deficiency, but elected inexplicably not to pursue or, even if the court disagreed, to preserve the issue. And we, like Mr. Holliday, cannot think of any reasonable strategy that would justify that decision. We have no trouble finding from the existing record that trial counsel's decision "fell below an objective standard of reasonableness" and rendered their performance deficient. *Testerman*, 170 Md. App. at 342 (*quoting Oken*, 343 Md. at 283).

Mr. Holliday then must demonstrate that he was prejudiced by trial counsel's

deficient performance. *Newton*, 455 Md. at 355. Specifically, he must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. . . . . A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* (internal quotations and citations omitted). And on this record, the prejudice to Mr. Holliday is obvious and indisputable. Had trial counsel moved for judgment on sufficiency grounds, it's likely that Mr. Holliday would have been acquitted of his burglary charges rather than being convicted and sentenced to a lengthy term in prison. And even if the Circuit Court had denied his motion, Mr. Holliday's claim would have been preserved and we would, for the reasons discussed above, have reversed the burglary convictions and barred a new trial. *Williams v. State*, 342 Md. at 736.

We emphasize that this is an unusual case. Most defense counsel move (appropriately) for judgment knowing full well that the motion has little or no chance, so it seems all the more serious an error for trial counsel not to challenge the sufficiency of the evidence when there is a real question about whether the State has met its burden. It is rarer still for the State to concede (to its credit) that the evidence presented at trial was legally insufficient, as it has in this case. The error and prejudice are plain from the trial record alone, and there is no reason to spend additional time and resources at a post-conviction proceeding when everything we need to know is already before us. Nor is there any efficiency or other reason to require Mr. Holliday to await a post-conviction process, and to continue serving time, for crimes the State did not prove he committed. We hold that trial counsel failed to provide Mr. Holliday effective assistance, and because the

evidence supporting the burglary convictions was insufficient as a matter of law, we reverse the convictions and hold that Mr. Holliday cannot be retried for those crimes.[8]

C. Mr. Holliday's Ten-year Sentence For Theft Over $1,000 But Under $10,000 Is Illegal.

Between the time Mr. Holliday was charged, 2015, and the time he was tried and sentenced, 2018, the General Assembly amended the Maryland theft statutes. In 2015, under Maryland Code (2002, 2012 Repl. Vol.), § 7-104(g)(1)(i) of the Criminal Law Article, theft of at least $1,000 but less than $10,000 was classified as a felony and carried a sentence of imprisonment not exceeding ten years. In 2017, § 7-104 was amended, and the threshold for felony theft was raised to $1,500. Md. Code (2002, 2012 Repl. Vol., 2018 Cum. Supp.), § 7-104(g)(1)(i) of the Criminal Law Article. Theft of under $1,500 dollars is currently classified as a misdemeanor and is subject to a sentence of imprisonment not exceeding six months for a first conviction and not exceeding one year for a subsequent conviction. *Id.* at § 7-104(g)(2).

Mr. Holliday was sentenced to ten years' imprisonment for stealing Ms. Song's laptop under the 2015 version of the statute. The parties agree that the laptop was worth $1,400. They also agree that Mr. Holliday should have been sentenced under the amended version of the theft statute and that his existing sentence is illegal.[9] The State contends,

[8] And as a result, we need not address Mr. Holliday's alternative argument that "[t]he trial court committed plain error when it allowed the State in closing argument to misstate the law and misrepresent the facts pertaining to the burglary counts."

[9] The State also argues in its brief that this argument wasn't preserved, but challenges to an illegal sentence are not subject to the preservation requirement. "It has been settled since [] 1985 . . . that an illegal sentence claim under Rule 4-345(a) [] is not subject to waiver."

however, that although the current version of the statute classifies Mr. Holliday's crime as a misdemeanor, "the application of the theft statute amendments to [Mr.] Holliday's case is limited to his sentence," and not to the "classification of [his] offense." In other words, even though Mr. Holliday's $1,400 theft is inarguably a misdemeanor under the amended statute, and although the amended statute is applicable to his case, because he was *convicted* of felony theft, the State says that he should be *sentenced* according to the amended felony theft statute. We disagree.

The parties agree, and so do we, that the Court of Appeals's decision in *Waker v. State*, 431 Md. 1, 3 (2013), controls the outcome in this case. The issue in *Waker* is identical—Mr. Waker was tried and convicted for the theft of property valued at $615, which at the time of the offense was a felony. By the time he was sentenced, the statute had been amended and the threshold for felony theft had been raised, and Mr. Waker's crime was a misdemeanor under the amended statute. *Id.* at 5. The Court of Appeals held that in criminal cases where the date of the crime and the dates of trial and sentencing straddle an amendment to the applicable sentencing statute, the statute in effect at the time of trial and sentencing applies.[10] *Id.* at 12; *see also Webster v. State*, 221 Md. App. 100

Waker v. State, 431 Md. 1, 7 (2013) (*quoting Johnson v. State*, 427 Md. 356, 371 (2012)). Rule 4-345(a) provides that a court may correct an illegal sentence at any time, and a defendant "who fails to object to the imposition of an illegal sentence does not waive forever his right to challenge that sentence." *Walczak v. State*, 302 Md. 422, 427 (1985).

[10] Unless the amended statute is less favorable to the defendant, in which case the old version applies in order to avoid running afoul of the *ex post facto* prohibition in the Maryland Declaration of Rights. *See Waker*, 431 Md. at 12 n. 3.

(2015) (trial court erred by imposing a one-year sentence for possession of 0.5 grams of marijuana when the statute as amended at the time of sentencing capped the sentence at 90 days).

The State urges us to find that Mr. Holliday nonetheless should be sentenced under the amended felony theft statute because "[n]othing in *Waker*[11] . . . suggests that amendments enacted after the commission of the crime alter the classification of the offense." *Waker* did not address that question in so many words, but we are more concerned with the substance of the offense than its label as either a misdemeanor or felony at the time it was charged. In this case, Mr. Holliday stands convicted of stealing a laptop valued at $1,400, an offense that is indisputably a misdemeanor under the statute applicable at the time of his trial and sentencing. The fact that the same crime was once labeled a felony under a different, no longer applicable, statute should not affect (and enhance) Mr. Holliday's sentence. We hold that Mr. Holliday's ten-year sentence for theft of a $1,400 laptop is illegal and that he should have been sentenced under Maryland Code

[11] Although the Court of Appeals didn't frame its inquiry in those terms, the Court did note that:

> [A]t the time when Waker's theft was committed, the theft of goods with a value of $615.60 was a *felony* punishable by up to 15 years in prison . . . . By the time Waker was tried, found guilty, and sentenced, a theft of $615.60 was a *misdemeanor* punishable by no more than 18 months in prison[.]

Waker, 431 Md. at 5 (emphasis added). The Court then determined that the latter statute, classifying the theft as a misdemeanor, applied, and held "that the sentence imposed upon Waker was illegal because it was not authorized by the statute in effect at the time of his trial and sentencing." *Id.* at 13.

(2002, 2012 Repl. Vol. 2018 Cum. Supp.) § 7-104(g)(2) of the Criminal Law Article, which provides that "a person convicted of theft of property or services with a value of at least $100 but less than $1,500 is guilty of a misdemeanor" and is subject to imprisonment not exceeding six months for a first conviction and not exceeding one year for a subsequent conviction. We vacate his sentence on that charge and remand for sentencing consistent with this opinion.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED AS TO CONVICTIONS FOR FIRST-, SECOND-, AND FOURTH-DEGREE BURGLARY, VACATED AS TO THE SENTENCE FOR THEFT OF PROPERTY WITH A VALUE OF AT LEAST $100 BUT LESS THAN $1,500, AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. PRINCE GEORGE'S COUNTY TO PAY COSTS.