

Circuit Court for Caroline County
Case No. 05-K-90-003761

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0322

September Term, 2019

SONG JIN YUN

v.

STATE OF MARYLAND

Shaw Geter,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Gould, J.

Filed: May 4, 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.

In October 1991, Appellant Song Jin Yun was convicted by a jury in the Circuit Court for Caroline County of premeditated murder, felony murder, second-degree murder, armed robbery, burglary, and the use of a handgun in the commission of a felony, all in connection with the 1989 killing of In Gyu Choe during the burglary of his home. Mr. Yun was sentenced to life without parole for the premeditated murder conviction, 20 years' imprisonment for the armed robbery conviction, to run consecutive to the life without parole sentence, and 20 years' imprisonment for each of the burglary and handgun convictions, to run concurrent with the armed robbery sentence. The court merged the felony murder and second-degree murder convictions into the premeditated murder conviction. This Court denied Mr. Yun's subsequent appeal, and the Court of Appeals denied his petition for certiorari. Yun v. State, 331 Md. 88 (1993).

The circuit court denied his first motion to correct illegal sentence. In January 2019, Mr. Yun filed a second motion to correct illegal sentence pursuant to Rule 4-345. He claimed that the court erred in merging his felony murder conviction into his premeditated murder conviction. He also contended that he did not receive full credit for time served. The circuit court denied his motion. This timely appeal followed.

DISCUSSION

On appeal, Mr. Yun repeats the issues he raised in his second motion to correct illegal sentence, which we have reframed as follows:

1. Did the court err in merging the felony murder conviction into his premeditated murder conviction?
2. Did the court err in sentencing him for the premeditated murder rather than the other murder convictions?

3. Did the court err in failing to give him full credit for time served?

For the reasons that follow, we answer each question in the negative and affirm.

STANDARD OF REVIEW

We review the denial of a motion to correct illegal sentence under a de novo standard of review. Blickenstaff v. State, 393 Md. 680, 683 (2006).

AN ILLEGAL SENTENCE UNDER RULE 4-345(a)

Mr. Yun argues that his three convictions for the same murder is an error of law because “[h]e did not kill the victim three times,” and contends that this error could have been corrected by a jury instruction. Mr. Yun also argues that because felony murder and premeditated murder “do not share common elements under the required evidence test, and there is no statutory ambiguity on which to apply the rule of lenity,” the circuit court erred in merging his felony murder conviction into his premeditated murder conviction, and therefore, his sentence is illegal. Last, Mr. Yun argues that the court was not entitled to arbitrarily choose to convict him for the most serious crime because that responsibility belonged to the jury.

The State contends that relief under Rule 4-345(a) is not available to Mr. Yun. It argues that this relief is only available for inherently illegal sentences and, because Mr. “Yun’s sentence was permitted by statute, and related to a crime” with which he was charged and convicted, his sentence is not inherently illegal. The State also argues that the jury found Mr. Yun guilty under multiple theories of first-degree murder and that the court’s sentencing for the premeditated murder was proper because he received only one sentence. We agree with the State.

Rule 4-345 provides that “[t]he court may correct an illegal sentence at any time.” For this rule to apply, however, “the illegality must inhere in the sentence itself, rather than stem from trial court error during the sentencing proceeding.” Matthews v. State, 424 Md. 503, 512 (2012). As stated by the Court of Appeals,

[a] motion to correct an illegal sentence ordinarily can be granted only where there is some illegality in the sentence itself or where no sentence should have been imposed. On the other hand, a trial court error during the sentencing proceeding is not ordinarily cognizable under Rule 4-345(a) where the resulting sentence or sanction is itself lawful.

Montgomery v. State, 405 Md. 67, 74-75 (2008) (internal quotations omitted); see also Carlini v. State, 215 Md. App. 415, 447 (2013) (quotations omitted) (emphasis removed) (an illegal sentence is an “obvious reference to a sentence which is beyond the statutorily granted power of the judge to impose. It does not remotely suggest that a sentence, proper on its face, becomes an ‘illegal’ sentence: because of some arguable procedural flaw in the sentencing procedure.”).

“[A] motion to correct an illegal sentence is not an alternative method of obtaining belated appellate review of the proceedings that led to the imposition of judgment and sentence in a criminal case.” State v. Wilkins, 393 Md. 269, 273 (2006). As such, Rule 4-345(a) is not applicable where “the sentences imposed were not inherently illegal, despite some form of error or alleged injustice.” Matthews, 424 Md. at 513.

Here, Mr. Yun is not contending that his sentence of life without parole is an illegal sentence for premeditated murder. Rather, all of his contentions—that convictions under three different murder charges was an error of law, that the court erred by merging his

felony murder conviction into his premeditated murder conviction,¹ and that the court was not entitled to arbitrarily choose to sentence him for the most severe conviction—are all perceived errors in the sentencing proceeding, not in the sentence itself. As such, Rule 4-345 provides no basis for relief. Although we would affirm for this reason alone, we will nevertheless address Mr. Yun’s specific contentions.

MERGER OF THE FELONY MURDER CONVICTION

Mr. Yun first argues that the court erred in merging his felony murder conviction into his premeditated murder conviction, seeking succor from our opinion in Burroughs v. State, 88 Md. App. 229 (1991). Mr. Yun cites to Burroughs as support for his contention that “[t]hree convictions for one homicide is an error of law” and that the jury should not have been allowed to convict him of “murder three times over, although there was only one victim.” Mr. Yun additionally cites to Burroughs in support of his argument that because felony murder does not merge into premediated murder, his sentence is illegal. His reliance on Burroughs is misplaced.

In Burroughs, the defendant was not only convicted of premeditated murder and felony murder but also sentenced for both convictions. 88 Md. App. at 246. It was the double-sentencing that we found so problematic, and we resolved that problem by vacating the second sentence because the problem could not be remedied by merging the two convictions. Id. at 247. Here, Mr. Yun was not sentenced twice for committing one

¹ Mr. Yun does not argue that the court erred in merging the second-degree murder conviction into the premeditated murder conviction.

murder. Our decision in Burroughs, therefore, is of no help to Mr. Yun, and we find no error in the circuit court’s denial of his motion on this ground.

SENTENCING FOR THE PREMEDITATED MURDER

Mr. Yun next argues that his sentence is defective because the court improperly sentenced him for the most “severe” of the three murder charges on which he was found guilty, instead of the one carrying the mildest sentence.² Mr. Yun argues that the

² Mr. Yun made essentially this same argument in the direct appeal of his conviction. See Yun v. State, Number 533, September Term 1992, per curiam opinion, unreported, filed February 17, 1993, slip opinion at 16. There, Mr. Yun contended that “[u]nder the Frye [v. State], 283 Md. 709 (1978)] test the more lenient punishment for murder dictates for a sentence for first degree category murder” and that “his sentence [was] illegal because he should have been sentenced to life imprisonment without the possibility of parole.” Id. As we stated there:

Mr. Yun has misinterpreted the Court of Appeals[’] holding in Frye. The Court found that, when multiple murder charges are filed and the verdicts are guilty as to all the murder counts, the court should not impose a sentence on each count, but merge the lesser offenses into the greater offense. In Mr. Yun’s case, the court merged his convictions on the murder charges into the conviction for the first-degree murder, therefore the court did properly follow Frye.

Id., slip opinion at 17.

Thus, Mr. Yun’s argument here is barred by the law of the case, which provides that:

once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case. Furthermore, not only are lower courts bound by the law of the case, but decisions rendered by a prior appellate panel will generally govern the second appeal at the same appellate level as well, unless the previous decision is incorrect because it is out of keeping with controlling principles announced by a higher court and following the decision would result in manifest injustice.

“[p]rincipals of fundamental fairness and the rule of lenity require that where there is a defective verdict, as in this case, the defendant receive the milder over the harsher penalty, not the opposite.”

Mr. Yun relies on Haskins v. State, 171 Md. App. 182 (2006), for the proposition that “where there is doubt, or error, or ambiguity[,] punishment must be construed to favor a milder penalty.” Our complete statement in Haskins was, “if doubt exists as to the proper penalty, punishment must be construed to favor a milder penalty.” 171 Md. App. at 193-94. Here, there is no doubt as to the proper penalty, as life without parole can be imposed for both premeditated murder and felony murder. See Md. Code Ann., Crim. Law (“CL”) § 2-201(a), (b) (2002, 2012 Repl. Vol.). As such, Haskins has no relevance here.³

Mr. Yun also contends that “[c]aselaw clearly holds that where a court receives fatally defective verdicts it is not empowered to ‘cut the knot’ and select (by notions of justice, gut feel, or random selection) on which convictions to sentence the defendant,” citing to Heinze v. State, 184 Md. 613, 618 (1945). Mr. Yun’s quote from Heinze is part of a quote from Justice Holmes who stated, on the subject of inconsistent verdicts, that “further deliberation is necessary in order that the jury might decide between the two [counts], and the judge cannot ‘cut the knot by directing a verdict of not guilty upon

Holloway v. State, 232 Md. App. 272, 279 (2017) (cleaned up).

³ Mr. Yun also cites to Wright v. State, 24 Md. App. 309 (1975), but does not explain the relevance of the case to his argument. Without more, we can only guess that Mr. Yun cited to Wright because Wright contains the same quotation that Mr. Yun cited from Haskins. Wright, 24 Md. App. at 320. As we stated above, that argument is not relevant here.

either.” Id. at 619 (quotation omitted). Mr. Yun’s case does not involve inconsistent verdicts. Mr. Yun does not even argue that it does.

In any event, Mr. Yun’s argument is misplaced. The rule of lenity and the principles of fundamental fairness prevent *multiple sentences* for the same crime, not *guilty verdicts on multiple charges* for the same crime. See Fenwick v. State, 135 Md. App. 167, 174 (2000); Pair v. State, 202 Md. App. 617, 643-44 (2011). Thus, when there are multiple convictions for the same crime, the court should merge the lesser conviction into the greater conviction. See Abeokuto v. State, 391 Md. 289, 356 (2006); Slye v. State, 42 Md. App. 520, 526 (1979) (citing Stewart v. Warden, 243 Md. 697, 699 (1966)). This is precisely what the court did here. Thus, the court correctly applied the law and did not usurp the responsibility of the jury.⁴

CREDIT FOR TIME SERVED

Mr. Yun’s final argument is that the court did not properly credit him with the month he served in a California prior to being extradited to Maryland. As the Court of Appeals recently held, a motion to correct an illegal sentence pursuant to Rule 4-345 does not “include procedural defects such as the failure to award credit.” Bratt v. State, No. 39, September Term 2019, slip op. at 20 (Apr. 28, 2020).

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

⁴ As the sentence for felony murder could also be life without parole, see CL § 2-201(a), (b), Mr. Yun cannot claim that his sentence was harsher than it would have been for felony murder.