Circuit Court for Baltimore City
Case No. 110138057-073

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0400

September Term, 2023

DONTE GLADDEN

v.

STATE OF MARYLAND

Zic,
Albright,
Kenney, James S., III,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: May 21, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal comes to us from the Circuit Court for Baltimore City, where, in 2022, Appellant Donte Gladden moved to correct sentences that he claimed were illegally imposed on him ten years earlier. The circuit court granted Mr. Gladden's motion in part and denied it in part. Here, Mr. Gladden questions whether that denial was error.[1] Seeing no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 2014, in our opinion addressing Mr. Gladden's direct appeal, we summarized the facts that lead to Mr. Gladden's being found guilty and sentenced. We said:

> On April 16, 2010, Kevin Hall lived at 3215 Spaulding Avenue with his girlfriend, Nykole Garner, and her three children, Brendan, who was approximately nine years old, Brandon, who was approximately twelve years old and Brynia, who was approximately thirteen years old.[2] At around 9:50 p.m., Baltimore City Police Officer Lane Eskins received a call for a shooting at 3215 Spaulding Avenue. When Officer Eskins responded to that address, she was met at the door by Nykole Garner, who had an extension cord tied on her arm. Officer Eskins went to the basement of the home, where she found Kevin Hall, who had been shot and was bleeding from the head, and two children who were lying face down on the floor. Hall told Officer Eskins that Gladden shot him.
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> Hall testified that, at approximately 9:00 p.m. on the night of the shooting, he received a call from a number he did not recognize, but he recognized the person on the telephone as Gladden, whom he knew as "Te," a person with whom he had grown up. Gladden said he wanted to stop by to "holler at" him and Hall told him to "[c]ome on by." Later that evening, Gladden and another man whom Hall did not know arrived at the Spaulding Avenue address and asked for an ounce of marijuana. Hall, who was selling

[1] Mr. Gladden phrased his question on appeal as: "Did the lower court err in denying portions of Mr. Gladden's Motion to Correct an illegal sentence?"

[2] In the footnote that was here, we observed that "[t]he children's names are spelled in a variety of ways throughout the record, but for consistency, we shall use these spellings." Today, we will continue to use the spellings that we used when addressing Mr. Gladden's direct appeal.

marijuana, went to the basement to get some, but realized he did not have a sandwich bag; consequently, he went back upstairs to get one. At that time, the man with Gladden put a gun to Hall's head and said, "You know what time it is. Don't say nothing."

Gladden, who also had a gun and was now wearing a mask that covered his mouth, told Brandon and Brynia to lie on the floor. Gladden went upstairs, got Garner, pointed a gun at her stomach and had her lay on the floor with the children. Both Gladden and the other man pointed their guns at the children and started asking, "Where's the money at?" Garner told the men that whatever Hall had given them was what they had and they pointed a gun to Brandon's head. When Garner said "you have a gun to my son's head, if I had something I would tell you," they put the gun into the child's mouth.

Hall said he did not have any money, but he had some "weed" in the basement. At that time, a third man entered the house. The two men that Hall did not know took him to the basement to get the marijuana. Once they found it, they brought Hall back upstairs and continued to ask, "Where's the money?"

Eventually, the men took Hall, Garner and the two children to the basement, where they pointed their guns at Garner and her children and threatened to shoot Hall if he did not tell them where the money was. Garner remembered that she had some money in her purse and, in order to retrieve it, went upstairs with Gladden and one of the other men. After she gave the men the money from her purse, they put a gun into her mouth. When she told them she had given them everything, one of the men hit her on the side of her face. When Garner returned to the basement, her arms were tied together with a cord from a video game.

The three men went to the top of the stairs and then Gladden returned to the basement with a pillow, which he held over Hall's face. Hall fought with Gladden and said, "Do what you want to do . . . look me in my face." Gladden pointed his gun at Garner and the children and Hall rolled onto his stomach with his hands on the back of his head. He told Gladden, "Do what you're going to do." Gladden then fired four or five shots, striking Hall in his head. Hall dropped his arm to make it look like he was "gone" and Gladden left. Hall identified Gladden in a photographic array the day after the shooting and also at trial.

Gladden v. State, No. 2496, Sept. Term, 2011, at *1–3 (Jan. 15, 2014).

Mr. Gladden was found guilty of eighteen counts. Prior to sentencing, he urged the circuit court to merge two of the verdicts involving Ms. Garner. Specifically, Mr. Gladden

contended that because assault in the first degree was a lesser included offense of robbery with a deadly weapon, those counts should merge for sentencing purposes. The circuit court disagreed, finding that the counts were "distinct charges."

When it sentenced Mr. Gladden, the circuit court announced as follows:

> Mr. Gladden, in Case Number 110138057, a jury on October 14, 2011, having found you guilty of the crime of attempted murder in the second degree, Count II, I sentence you to 30 years to the Division of Corrections. The court will suspend all but 15 years of that sentence. You're placed on 5 years supervised probation.
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> In Count V of the same indictment, the jury having found you guilty of the crime of use of a handgun in a crime of violence, I sentence you to five years to the Division of Corrections without the benefit of parole, and that shall run consecutive.
>
> In Count VI, the crime of wearing, carrying, and transporting a handgun, I sentence you to five years to the Division of Corrections. That sentence shall run concurrent.
>
> In Count VIII, the jury having found you guilty of the crime of discharging a firearm within Baltimore City limits, I sentence you to one year to the Division of Corrections. That sentence shall run concurrent.
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> In Case Number 110138059, this jury having found you guilty of the crime of robbery with a deadly weapon of Kevin Hall, I sentence you to 15 years to the Division of Corrections. The court will suspend all but time served. You're placed on five years supervised probation in that sentence. If you violate probation, it shall run consecutive to the counts to the sentence the court has already imposed.
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> In Case Number 110138061, the jury having found you guilty of the crime of false imprisonment, I sentence you to five years to the Division of Corrections. And that sentence shall run concurrent with the sentence the court has imposed.
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> In Case Number I1038062, the jury having found you guilty of the crime of assault in the first degree of [Brynia] Garner, I sentence you to 10 years to the Division of Corrections. And that sentence shall run consecutive to the sentence that the court just imposed.
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> In Count V of the same indictment, the jury having found you guilty of the crime of use of a handgun in a crime of violence, I sentence you to five years to the Division of Corrections without the benefit of parole. And that sentence shall run concurrent with the sentence the court just imposed.

In Case Number 110138064, the jury having found you guilty of the crime of false imprisonment of [Brynia] Garner, I sentence you to five years to the Division of Corrections. And that sentence shall run concurrent to the sentence that the court just imposed.

In Case Number 110138065, the jury having found you guilty of the crime of assault in the first degree of [Nykole] Garner, I should say the pistol whipping of her as well that's what it was, I sentence you to ten years to the Division of Corrections. And that sentence shall run consecutive to the sentence that the court has imposed.

In the same case number ending 065, Count V, the jury having found you guilty of the crime of use of a handgun in a crime of violence, I sentence you to five years without the benefit of parole. And that sentence shall run concurrent to the sentence the court has already imposed.

And finally, in Case Number 110138067, the jury having found you guilty of the crime of robbery with a deadly weapon of [Nykole] Garner, I sentence you to 15 years to the Division of Corrections. The court will suspend all but time served. You're placed on five years supervised probation, and that sentence shall run concurrent.

In Case Number 110138070, the jury having found you guilty of the crime of assault of [Brandon] Williams in the first degree, I sentence you to 15 years to the Division of Corrections. That sentence shall run consecutive to the sentence that the court has already imposed.

In Count V of that same indictment, the jury having found you guilty of the crime of use of a handgun in a crime of violence, I sentence you to five years to the Division of Corrections without the benefit of parole. And that sentence shall run concurrent to the sentence the court has already imposed.

And finally, in Case Number 110138072, the jury having found you guilty of the crime of false imprisonment of [Brandon] Williams, I sentence you to five years to the Division of Corrections. And that sentence shall run concurrent to the sentence the court has just imposed.

And finally, in Case Number 110138073, the jury having found you guilty of the crime of being a prohibited person under the age of 21 in possession of a firearm, I sentence you to five years to the Division of Corrections. And that sentence shall run concurrent to the sentences that the court has already imposed.

About two months after sentencing, the Department of Public Safety and Correctional Services ("DOC") notified the circuit court of a discrepancy in Mr. Gladden's sentence. Specifically, while the circuit court had said that it was imposing a

total term of fifty-five years, DOC interpreted the sentence to impose a total term of forty-five years. It suggested that if the circuit court's intention was to sentence Mr. Gladden to a total term of fifty-five years, two corrections would have to be made. These were (1) that the sentence for first-degree assault in Count III of Case No. 110138065 be consecutive to the sentence for Count III in Case No. 110138062; and (2) that the sentence for first-degree assault in Case No. 110138070 be consecutive to the sentence for Count III in Case No. 110138065. DOC asked the circuit court for a "review of [Mr. Gladden's] file and [that] an amended commitment be forwarded to this office to indicate the correct total term or the correct sentence structure." About a week later, the circuit court issued an amended commitment record, making the two corrections that DOC identified. The resulting total time to be served remained fifty-five years.[3]

In 2022, Mr. Gladden filed the illegal sentence motion that generated this appeal. He argued that his sentences were illegal because they were ambiguous and that it was error for the circuit court to have failed to merge certain of his convictions. As to Case No. 110138057, Mr. Gladden argued (1) that his convictions for wearing and carrying a handgun and discharging a firearm should have been merged into his sentence for use of a handgun in the commission of a crime of violence; and (2) that the five-year sentence for wearing, carrying, and transporting a handgun was illegal because it exceeded the three-year statutory maximum for that charge. As to the convictions involving Ms.

[3] The sentence would begin to run on April 23, 2010, as it would have when first imposed.

Garner, Mr. Gladden argued that the conviction for first-degree assault should have been merged into the sentence for robbery with a deadly weapon. Mr. Gladden added that for the false imprisonment convictions involving Ms. Garner and Mr. Hall, those, too, should have been merged into his sentences for robbery with a deadly weapon of Ms. Garner and Mr. Hall.

After a hearing, the circuit court granted some of the relief Mr. Gladden requested. It agreed that in Case No. 110138057, Mr. Gladden's conviction for wearing, carrying, and transporting a handgun should have been merged into his sentence for use of a handgun in the commission of a crime of violence. The circuit court also acknowledged that the maximum sentence for wearing, carrying, and transporting a handgun was three years, not five years, and modified the sentence for that count to three years, to run concurrently to the conviction for use of a handgun in the commission of a crime of violence. The circuit court denied the remainder of the relief requested in Mr. Gladden's motion.

This timely appeal followed. We will add additional facts below as appropriate.

STANDARD OF REVIEW

Under Maryland law, "[t]he court may correct an illegal sentence at any time." Md. Rule 4-345(a). We review the denial of a motion to correct an illegal sentence de novo. *Johnson v. State*, 467 Md. 362, 389 (2020). Rather than focus on procedural flaws leading to the sentence, *State v. Wilkins*, 393 Md. 269, 273 (2006), we ask whether the

defendant's sentences are "intrinsically and substantively unlawful." *Chaney v. State*, 397 Md. 460, 466 (2007).

DISCUSSION

Mr. Gladden first argues that the circuit court "erred in relying on an amended commitment record of which Mr. Gladden was unaware, received no notice of, and was done in violation of Md. Rule 4-345(f) and is thus, illegal." We disagree. A commitment record is "an administrative document prepared by a clerk." *State v. Bustillo*, 480 Md. 650, 670 (2022). It must document the "sentence for each count, the date the sentence was imposed, the date from which the sentence runs, and any credit allowed to the defendant by law." Md. Rule 4-351(a)(4). In addition, it must state "whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of the preceding term or to any other outstanding or unserved sentence." Md. Rule 4-351(a)(5). If there is any conflict between the court's announced sentence and the commitment record, it is the sentence announced in court (and thereby transcribed) that controls. *See, e.g., Douglas v. State*, 130 Md. App. 666, 673 (2000).

Rule 4-351(b) today sets forth a process for the amendment of commitment records. It provides that a "commitment record may be corrected at any time upon motion, or, after notice to the parties and an opportunity to object, on the Court's own

initiative." Md. Rule 4-351(b).[4] Nonetheless, "[a]n omission or error in the commitment record or other failure to comply with [Rule 4-351] does not invalidate imprisonment after conviction. Md. Rule 4-351(b). *See also Bratt v. State,* 468 Md. 481, 506 (2020) ("[A] commitment record error or omission does not nullify the sentence or term of imprisonment imposed, which would ordinarily require resentencing or a hearing. Instead, the commitment record error or omission is addressed through a motion to amend the commitment record to reflect credit for time served.").

That the circuit court corrected Mr. Gladden's commitment record without first notifying him and affording him a chance to object does not invalidate his sentences. The circuit court made this correction in March 2012, nine years before Rule 4-351(b) was amended to provide for notice and an opportunity to object. Simply put, when the circuit court amended Mr. Gladden's commitment record in 2012, it was not required to notify him or afford him a chance to object. Moreover, even if Rule 4-351(b) could be said to have some retroactive application (an argument that Mr. Gladden does not make), the failure to have notified Mr. Gladden of the correction "does not invalidate imprisonment after conviction." *See* Md. Rule 4-351(b). Thus, to the extent that Mr. Gladden bases his illegal sentence claim on the 2012 amendment of his commitment record, his claim fails.

Mr. Gladden next argues that, as to all but the first two counts for which sentence was imposed, the circuit court's pronouncement of sentence was "so confusing and

[4] The notice (and opportunity to object) provision of Rule 4-351(b) was added on March 30, 2021. Supreme Court of Maryland, Rules Order at 42 (Mar. 30, 2021), https://www.mdcourts.gov/sites/default/files/rules/order/ro206.pdf.

ambiguous as to render it illegal," and that as a result, his sentences for all but the first two counts should be deemed to run concurrently. Pointing to the ten-year sentence for first-degree assault of Brynia Garner, which the trial court ordered be served consecutively "to the sentence that the court has just imposed," Mr. Gladden argues that "the sentence just imposed" was five years for false imprisonment. Further, pointing to the ten-year sentence for first-degree assault of [Nykole] Garner, which the trial court ordered be served consecutively to "the sentence the court has imposed," Mr. Gladden argues that by this point, the trial court had imposed nine sentences. Mr. Gladden also points to the fifteen-year sentence for first-degree assault of Brandon Williams, which the trial court ordered be served consecutively to the sentence the court had "already imposed[,]" and argues, generally, that it is ambiguous.

To be sure, "[t]he trial judge's obligation is to articulate the period of confinement with clarity so as to facilitate the prison authority's task." *Robinson v. Lee*, 317 Md. 371, 379 (1989). "Where the record does not reflect whether a sentence, when imposed, is meant to run concurrently or consecutively with a sentence to which the defendant is already subject, the present sentence is construed to run concurrently with the prior sentence." *Collins v. State*, 69 Md. App. 173, 198 (1986).

Looking at Mr. Gladden's sentences as a whole, we do not see the ambiguity that Mr. Gladden posits. From the outset, the trial court aggregated its sentences by victim. Thus, for each victim, the trial court imposed a separate (and consecutive) sentence for attempted murder or assault, as applicable to that victim. As for Mr. Gladden's use of a

handgun in the commission of a crime of violence on Mr. Hall, the trial court ordered that that sentence also run consecutively to its sentence for attempted murder in the second degree of Mr. Hall. For each victim, the remaining sentences were to be served concurrently with attempted murder, use of a handgun, or assault, as applicable to that victim. Thus, the aggregate of the sentences for each victim was to be served consecutively to the aggregate of what the trial court had imposed for each of the prior victims. Together, the sentence for attempted murder of Kevin Hall (fifteen years), use of a handgun in a crime of violence as to Kevin Hall (five years), first-degree assault of Brynia Garner (ten years), first-degree assault of Nykole Garner (ten years), and first-degree assault of Brandon Williams (fifteen years) totaled the fifty-five years that was listed on both of Mr. Gladden's commitment records.

Even if Mr. Gladden's reading of the sentencing record is correct, it does not render his sentence illegal. At most, Mr. Gladden's reading of the sentencing record would mean that his current commitment record is inaccurate, not that his sentence is illegal. If the ten-year sentence that Mr. Gladden received for assaulting Nykole Garner was meant to be consecutive to the five-year sentence for false imprisonment of Brynia Garner, and if the fifteen-year sentence that Mr. Gladden received for assaulting Brandon Williams was meant to be consecutive to the five-year sentence Mr. Gladden received for falsely imprisoning Nykole, the total term for Mr. Gladden would be forty-five years, not fifty-five years.

Mr. Gladden next argues that his sentence for first-degree assault of Ms. Garner should merge with his sentence for armed robbery because first-degree assault is a lesser included offense of armed robbery. We disagree. That one offense is a lesser included offense of another is not the only requirement for merger. Instead, indeed preliminarily, the two offenses must be "based on the same act or acts[.]" *State v. Frazier,* 469 Md. 627, 641 (2020). If two offenses satisfy this test, "we then look at whether the offenses meet one of the three principles of merger recognized in Maryland: (1) the required evidence test; (2) the rule of lenity; and (3) the principle of fundamental fairness." *Silva v. State*, No. 1000, Sept. Term, 2023, 2024 WL 3579313 at *3 (July 30, 2024) (citing *Koushall v. State*, 479 Md. 124, 156 (2022). Below, the circuit court twice found that Mr. Gladden's convictions for first-degree assault and robbery with a deadly weapon were not "based on the same act or acts[,]"[5] Because Mr. Gladden does not challenge this conclusion here, we need go no further in analyzing whether his conviction for first-degree assault of Ms. Garner should have merged into his sentence for robbery with a deadly weapon. It does not.

Mr. Gladden also argues that his convictions for false imprisonment of Mr. Hall and Ms. Garner should have merged into his sentences for robbery with a deadly weapon of them. Specifically, Mr. Gladden points to *Hawkins v. State*, 34 Md. App. 82 (1976), to

[5] Specifically, when opposing Mr. Gladden's merger motion prior to sentencing, the State argued that these charges were based on separate, distinct acts, and the circuit court agreed. When denying that portion of Mr. Gladden's illegal sentence motion that pertained to his first-degree assault conviction, the circuit court agreed with the State that "the first degree assault was a separate charge and not the lesser included offense."

suggest that because Mr. Hall and Ms. Garner were detained "'only a sufficient time to accomplish' the robberies," his convictions for false imprisonment necessarily merge into his sentences for robbery with a deadly weapon. Again, we disagree.

In *Hawkins v. State,* the defendant was convicted of, and separately sentenced for, rape and false imprisonment, after approaching the victim in a wooded area and raping her at gunpoint at that location. 34 Md. App. at 83. We held that defendant's conviction for false imprisonment should have merged into his sentence for rape because "the victim was detained only a sufficient time to accomplish the rape." *Id.* at 92. We observed, however, "that confinement after or before the rape is committed would preclude merger." *Id.*

Here, by contrast, Mr. Gladden's detention of Mr. Hall and Ms. Garner continued after his armed robbery of them was over.

> After she gave the men the money from her purse, they put a gun into her mouth. When she told them she had given them everything, one of the men hit her on the side of her face. When Garner returned to the basement, her arms were tied together with a cord from a video game.
>
> The three men went to the top of the stairs and then Gladden returned to the basement with a pillow, which he held over Hall's face. Hall fought with Gladden and said, "Do what you want to do . . . look me in my face." Gladden pointed his gun at Garner and the children and Hall rolled onto his stomach with his hands on the back of his head. He told Gladden, "Do what you're going to do." Gladden then fired four or five shots, striking Hall in his head. Hall dropped his arm to make it look like he was "gone" and Gladden left. Hall identified Gladden in a photographic array the day after the shooting and also at trial.

Gladden, slip op. at 3. In other words, Mr. Gladden detained Ms. Garner and Mr. Hall well longer than was necessary to rob them with a deadly weapon.[6]

Mr. Gladden next argues that his convictions for false imprisonment should merge with his sentences for armed robbery "as a matter of fundamental fairness." Mr. Gladden points to *Carroll v. State,* 428 Md. 679, 694–95 (2012), and contends that because the confinement that underlay his false imprisonment convictions of Mr. Hall and Ms. Garner was "simply 'part and parcel'" of his armed robberies of them, his sentences for these crimes should have been merged as a matter of fundamental fairness.

We reject Mr. Gladden's fundamental fairness argument because it is not preserved. Merger based on fundamental fairness must be raised, and thereby preserved, before the sentencing court. *Koushall*, 479 Md. at 163. Moreover, "failure to merge a sentence based on fundamental fairness does not render the sentence illegal." *Id.* Here, Mr. Gladden did not argue to the sentencing court that as a matter of fundamental fairness, his convictions for false imprisonment should have been merged into his sentences for armed robbery. Accordingly, we do not conclude that the sentencing court's failure to have merged these convictions out of fundamental fairness amounted to an illegal sentence.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[6] The State argues that *Hawkins* is no longer the law after *State v. Stouffer*, 352 Md. 97 (1998), and *Graham v. State*, 325 Md. 398 (1992). Given our rejection of *Hawkins*'s applicability on its facts, we need not address these alternative arguments.