

Circuit Court for Anne Arundel County
Case Nos: 02-K-97-001684 & 02-K-97-001848

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 423

September Term, 2020

LYE ONG

v.

STATE OF MARYLAND

Fader, C.J.,
Kehoe,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 5, 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.

Lye H. Ong, appellant, filed a petition for writ of habeas corpus in the Circuit Court for Anne Arundel County in which he claimed that he is being held in prison beyond the statutory maximum term for child abuse. After the circuit denied relief, Mr. Ong appealed. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

In 1998, Mr. Ong entered a guilty plea to two counts of child abuse and one count of second-degree sexual offense in the Circuit Court for Howard County and was sentenced to a total term of 20 years' imprisonment, with five years suspended. In 2000, a jury in the Circuit Court for Anne Arundel County found Mr. Ong guilty of second-degree sexual offense, child abuse, perverted sexual practice, and third-degree sexual offense. The victim in the two cases was the same. The Circuit Court for Anne Arundel County sentenced Mr. Ong to a total term of 30 years' imprisonment, to run consecutively to the Howard County sentence. This Court affirmed the judgment. *Ong v. State*, No. 2544, Sept. Term, 2000 (filed December 12, 2001) (“*Ong I*”).

In 2014, Mr. Ong filed a motion to correct an illegal sentence in which he claimed that the court in the Anne Arundel County case had erred in (1) failing to merge the convictions for second-degree sexual offense and third-degree sexual offense with the conviction for child abuse and (2) ordering that the sentences run consecutively to the Howard County sentence. On appeal from the circuit court's denial of that motion, this Court held that the conviction for second-degree sexual offense should have merged with the conviction for child abuse. We vacated all the sentences and remanded for re-sentencing. *Ong v. State*, No. 253, Sept. Term, 2015 (filed March 9, 2017) (“*Ong II*”).

With regard to the second contention, we disagreed with Mr. Ong’s assertion that, because the victim in both cases was the same and the crimes took place partly during the same time period, the Howard County offenses should not be considered “a separate crime” from the Anne Arundel County offenses. *Slip op.* at 12. Rather, we concluded that “[t]he offenses committed in Howard County are separate from the offenses committed in Anne Arundel County, and therefore, the sentencing court did not err in ordering that the sentences run consecutive to the Howard County sentence. *Slip op.* at 13.

Pursuant to our remand order, the Circuit Court for Anne Arundel County re-sentenced Mr. Ong to a 15-year term of imprisonment for child abuse and a consecutively run 10-year sentence for the third-degree sexual offense – a total term of 25 years’ imprisonment. The court ordered that the sentence run consecutively to any sentence Mr. Ong was serving on November 1, 2000 – the date the original sentence was imposed and, hence, consecutive to the Howard County sentence. Mr. Ong did not appeal that sentence, but he did file a motion to correct an illegal sentence, which the circuit court denied. On appeal, Mr. Ong argued (1) that the re-sentencing court was without authority to impose a sentence for child abuse above the 10-year sentence originally imposed for that conviction, and (2) the re-sentencing court had erred in running his sentence consecutively to the Howard County sentence. *Ong v. State*, Nos. 2438 & 2439, Sept. Term, 2017 (filed December 31, 2018) (“*Ong III*”). This Court disagreed with the first contention, noting that 15 years’ imprisonment did not exceed the statutory maximum for the offense and found that, because the total sentence of 25 years’ imprisonment did not exceed the original total sentence of 30 years’ imprisonment, under *Twigg v. State*, 447 Md. 1, 26-27 (2016),

the 15-year sentence for child abuse was legal. *Slip op.* at 5-6. As for the second contention, we determined that the issue had been “resolved” in *Ong II* and, therefore, the law of the case doctrine barred a reconsideration of the issue. *Slip op.* at 2-3.

Prior to the issuance of our opinion in *Ong III*, Mr. Ong filed a Petition for Writ of Habeas Corpus in the Anne Arundel County circuit court in which he maintained that he “should be given only one punishment [for both the Howard County and Anne Arundel County cases], a sentence of 15 years, the statutory maximum sentence for the crime of sexual child abuse.” He asserted, therefore, that he “should have been released on 2/5/2013” and that his “imprisonment today is illegal and [he] should be released immediately since he has already served the statutory maximum sentence of 15 years plus many more years.”

After our opinion in *Ong III* was filed, the circuit court held a hearing on Mr. Ong’s habeas petition and later, by order dated June 9, 2020, denied relief after concluding that the issues raised in the petition had already been addressed by this Court and thus were barred by the law of the case doctrine. Mr. Ong’s appeal of that decision is the subject of the appeal now before us.

DISCUSSION

On appeal, Mr. Ong challenges the validity of the sentences imposed by the circuit court pursuant to our remand order in *Ong II*. He asserts that his petition for writ of habeas corpus that he had filed in the circuit court “was filed by [him] not to challenge the legality of the conviction or the validity of confinement under a sentence of imprisonment but the new sentence partially was in violations [sic] of double jeopardy and the maximum

statutory sentence” for child abuse. He claims that, when ruling on his habeas petition, the circuit court “failed to show any evidence how the two crimes in Anne Arundel County and Howard County were different or separate[.]” He then argues that “the facts are clear that the crimes in both cases are the same and the consecutive sentence imposed was in violation of double jeopardy[.]” He also maintains that, on re-sentencing, the sentence imposed for the third-degree sex offense should have been run concurrently with the sentence for child abuse, as it was originally, and disputes the application of *Twigg, supra*, as violative of “ex post facto laws.”

The State first moves to dismiss the appeal as not allowed by law, asserting that Mr. Ong’s appeal is “grounded in a challenge to the legality of a sentence” and, therefore, his appellate route from the denial of his habeas petition should have been by way of an application for leave to appeal. But in any event, the State maintains that the circuit court properly denied Mr. Ong’s request for habeas relief because the court properly concluded that the issues he had raised were already addressed by this Court and thus, were barred by the law of the case doctrine.

We shall deny the State’s motion to dismiss the appeal.¹ We agree with the State, however, that the circuit court did not err in denying Mr. Ong’s petition for habeas relief. That petition was simply a regurgitation of the same claims Mr. Ong has repeatedly made

¹ Even if correct that Mr. Ong’s appellate recourse should have been by way of an application for leave to appeal, in this instance, we would treat his brief as an application and grant the right to an appeal.

in previous motions and which have been addressed by this Court in his earlier appeals.² As such, the circuit court correctly concluded that Mr. Ong’s claims are barred by the law of the case doctrine.

**APPELLEE’S MOTION TO DISMISS
APPEAL DENIED. JUDGMENT OF THE
CIRCUIT COURT FOR ANNE ARUNDEL
COUNTY AFFIRMED. COSTS TO BE
PAID BY APPELLANT.**

² Although Mr. Ong may not have previously argued specifically that, upon re-sentencing, the sentence for third-degree sexual offense should have been run concurrently with the sentence for child abuse, that is an argument he could have raised in *Ong III*. Accordingly, the issue is barred by the law of the case doctrine. *State v. Holloway*, 232 Md. App. 272, 285 (2017) (Under the law of the case doctrine, “[n]either questions that were decided nor questions that could have been raised and decided on appeal can be relitigated.” (quotation omitted)).