

Circuit Court for Somerset County
Case No: 19-K-08-008829

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 552

September Term, 2018

NOTHERON NICKNORE CLARKE

v.

STATE OF MARYLAND

Meredith,
Graeff,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 29, 2019

*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 2008, following a jury trial in the Circuit Court for Somerset County, Notheron Nicknore Clarke was convicted of armed robbery, robbery, first and second-degree assault, and related offenses and was sentenced to 15 years' imprisonment. This Court affirmed the judgments. *Clarke v. State*, No. 2413, September Term, 2008 (filed August 19, 2011).

Ten years later, Mr. Clarke filed a motion to correct an illegal sentence pursuant to Md. Rule 4-345(a) in which he alleged that his conviction for armed robbery was invalid because the trial court had granted the defense's motion for judgment of acquittal on the weapons charges and hence, his conviction and sentence for armed robbery were illegal. The circuit court denied the motion.

On appeal, Mr. Clarke continues to assert that his armed robbery conviction was a nullity because "the weapons were essential to the armed robbery count [and] the acquittal of the lesser included offense, took away that required element." The State points out that this issue was raised and decided on direct appeal and, therefore, the law of the case precludes Mr. Clarke from raising it again. (The State also asserts that the issue is not the proper subject of a motion to correct an illegal sentence.) We agree with the State that Mr. Clarke is precluded from raising this issue.

On direct appeal, we concluded that "the dismissal of the weapons charges on the ground that a penknife is excepted from the definition of 'dangerous weapon' in [Criminal Law] § 4-101 did not render the penknife incapable of supporting a conviction for armed robbery." *Slip Op.* at 18. Accordingly, even if the issue were cognizable in a Rule 4-345(a) motion, the law of the case precludes the revisiting of the issue. *Scott v. State*, 379 Md.

170, 183 (2004) (“[O]nce an appellate court rules upon a question on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case.”).

**JUDGMENT OF THE CIRCUIT COURT
FOR SOMERSET COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**