Circuit Court for Baltimore City
Case No.: 112114012

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 592

September Term, 2020

JASON HAMEL

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 1, 2021

Following a 2013 trial in the Circuit Court for Baltimore City, a jury found Jason Hamel, appellant, guilty of second-degree murder, use of handgun in the commission of a felony or crime of violence, and wearing, transporting, and carrying a handgun. The court sentenced appellant to 30 years' imprisonment for second-degree murder, and to 20 consecutive years' imprisonment for use of handgun in the commission of a felony or crime of violence. The court merged the remaining conviction for sentencing.

In March of 2020, appellant filed a motion to correct an illegal sentence, contending that his conviction for second-degree murder should have merged for sentencing into his conviction for use of handgun in the commission of a felony or crime of violence. The circuit court denied that motion because of the "anti-merger" provision contained in Section 4-204[1] of the Criminal Law ("CL") Article which provides that "[a] person who violates this section is guilty of a misdemeanor and, *in addition to any other penalty imposed for the crime of violence or felony*, shall be sentenced to imprisonment for not less than 5 years and not exceeding 20 years." (emphasis added).

Appellant noted an appeal from the denial of his motion to correct an illegal sentence. For the reasons that follow, we shall affirm.

Appellant's merger argument is premised on the fact that, in *State v. Ferrell*, 313 Md. 291 (1988), the Court of Appeals held that, under the *Blockberger*[2] required evidence test, second-degree murder is a lesser included offense of use of handgun in the commission

[1] At the time of appellant's conviction, Section 4-204 of the Criminal Law Article prohibited using a handgun in the commission of a felony or crime of violence.

[2] *Blockburger v. United States*, 284 U.S. 299 (1932).

of a felony or crime of violence. *Ferrell*, however, dealt with principles of double jeopardy and not with merger of convictions for sentencing.

In *Whack v. State*, 288 Md. 137, 148-49 (1980), the Court of Appeals approved the "anti-merger" provision found in CL § 4-204.[3] More recently, this Court, in *Grandison v. State*, 234 Md. App. 564, 574 (2017), addressed appellant's exact argument, and explained:

> Although the Court of Appeals held, in *State v. Ferrell*, 313 Md. 291, 297 (1988), that use of a handgun in the commission of a felony or crime of violence and the predicate felony or crime of violence are the same offense under the required evidence test, that holding addressed a different circumstance – whether the predicate offense and the handgun offense could be tried in successive prosecutions. *Ferrell* held that they could not be tried in successive prosecutions. *Id*. *Ferrell* said nothing about whether separate sentences may be imposed for those crimes if they are brought in the same trial.
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> The question before us was squarely addressed by the Supreme Court in *Missouri v. Hunter*, 459 U.S. 359 (1983). There, the Court held:
>
> > Where, as here, a legislature specifically authorizes cumulative punishment under two statutes, regardless of whether those two statutes proscribe the "same" conduct under *Blockburger*, a court's task of statutory construction is at an end and the prosecutor may seek and the trial court or jury may impose cumulative punishment under such statutes in a single trial.
>
> *Id*. at 368-39.
>
> At the time the offenses at issue were committed, the statute proscribing unlawful use of a handgun stated as follows:
>
> > *Unlawful use of handgun in commission of crime.* – Any person who shall use a handgun in the commission of any felony or any crime of violence as defined in § 441 of this article, shall be guilty of a separate misdemeanor and on conviction thereof shall, in addition to any other sentence imposed by virtue of

[3] Appellant acknowledges the impediment that *Whack* imposes to his argument. To circumvent *Whack*, appellant claims that it was wrongly decided. We, however, are not at liberty to ignore binding precedent from the Court of Appeals.

> commission of said felony or misdemeanor . . . be sentenced to the Maryland Division of Correction[.]
>
> Md. Code (1957, 1982 Repl. Vol., Supp. 1982), Art. 27, § 36B(d).[4]
>
> It is manifest that the General Assembly intended that a separate sentence be imposed upon any person convicted of a violation of Section 36B(d), "in addition to any other sentence imposed by virtue of commission of said felony or misdemeanor." … Given that unambiguous expression of legislative intent, and the Supreme Court's instruction in *Missouri v. Hunter*, it is clear that Grandison's claim fails.

234 Md. App. at 574-76 (cleaned up).

Accordingly, as *Grandison* makes clear, just because two offenses are deemed the "same" under the required evidence test, they do not merge for sentencing if, as in the case of CL § 4-204, the legislature intended for the court to have the power to impose separate sentences for each offense. As a result, we affirm.

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

[4] Art. 27, § 36B(d) is the predecessor to Criminal Law Article § 4–204.