

Circuit Court for Caroline County
Case No.: 05-K-05-006176

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 756

September Term, 2020

KENNETH LEE TRICE, JR.

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: July 9, 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.

Following a 2005 trial in the Circuit Court for Caroline County, a jury found Kenneth Lee Trice, appellant, guilty of second-degree assault on a correctional officer, first-degree escape, carjacking, and related offenses. The court sentenced appellant to 10 years' imprisonment for second-degree assault, 10 consecutive years' imprisonment for first-degree escape, and 10 concurrent years' imprisonment for carjacking. The court merged the remaining convictions for sentencing.

In August of 2020, appellant filed a motion to correct an illegal sentence contending that his sentence for carjacking is illegal because he is being required to serve it twice as a result of what he believes is an “ambiguity” in the pronouncement of his sentence. On September 9, 2020, the circuit court summarily denied appellant's motion.¹ Thereafter, appellant noted an appeal from that denial. For the reasons that follow, we shall affirm the judgment of the circuit court but remand the case for clarification of the commitment record and docket entries.

Maryland Rule 4-345(a) permits the court to “correct an illegal sentence at any time.” A sentence that is illegal is one that is not permitted by law. *See Greco v. State*, 427 Md. 477, 508 (2012). Whether such an illegality exists is a question of law reviewed *de novo*. *Carlini v. State*, 215 Md. App. 415, 443 (2013).

¹ In November 2019, the court sent, upon request, a copy of appellant's commitment record to him. After receiving it, appellant wrote the court seeking clarification about his sentences and suggested that his sentence was illegal for the same reasons that he argues in this appeal. Apparently, the court treated the letter as a motion to correct an illegal sentence and summarily denied it. Appellant did not note an appeal from that denial.

Appellant’s argument is premised on comments made by the court during the sentencing proceeding, after it initially imposed the sentence for carjacking concurrent to the sentence for escape, that indicated that his sentence for carjacking was to be served concurrent to the sentences for both escape and second-degree assault. Appellant contends that both the docket entries and his commitment record indicate that his sentence for carjacking is to be served concurrent to his sentences for both for escape and second-degree assault, and therefore, his carjacking sentence is illegal because he is being required to serve that sentence twice in violation of the Double Jeopardy Clause of the United States’ Constitution.

A broader reading of the transcript of appellant’s sentencing hearing demonstrates that the court clearly imposed the sentence for carjacking concurrent with the sentence for escape, even though it twice misstated that fact when later discussing the sentence with the courtroom clerk and the parties. The first and last word by the court on the subject was that the sentence for carjacking was imposed concurrent with the sentence for escape.

After the court had pronounced the consecutive sentences for second-degree assault and escape, and after defense counsel asked the court to consider imposing those sentences concurrently instead of consecutively, the court said the following:

THE COURT: No. No. Okay. Now what I am gonna run concurrent and I’m... listen, I’m not gonna, I think it makes most common sense that I’m merging unlawful taking into robbery, robbery into carjacking. That’s what I’m gonna do for purposes of sentencing. **Um, I’m gonna give Mr. Trice ten years on the carjacking, but I’m gonna run that concurrent with the escape.** So it takes him to the top of the guidelines. I’m not going over the guidelines. Um, but I

will tell you that the carjacking is a fifty percent parole eligibility for parole.

THE STATE: Did you say the top of guidelines or the...you say twenty years or...

THE COURT: The top of the guidelines is twenty years.

THE STATE: Right. Is that what you... I didn't... what was the sentence on the carjacking?

DEFENSE COUNSEL: Ten.

THE COURT: **Ten years concurrent with the other two.** But the carjacking carries with it, it's a violent crime as defined um, by statute. So at least as to ten years of the sentence, he's not eligible for parole until he serves five. The other, I guess, is a quarter time. Nothing is gonna be suspended. Um, I think I've... Peggy [the courtroom clerk], let me ask you, do you understand? Do you want me to go through it one more time?

(Emphasis added).

Later on, after the court reviewed the sentences with the courtroom clerk, the following transpired:

THE COURT: Okay. Okay, let me just review. Count two merges into Count five [second-degree assault]. Count five is ten years, which is as much as I can give him. Consecutive to any and all sentences now serving. Count six is escape. Giving him the maximum of ten years. Um, consecutive to not only Count five, but also consecutive to any and all sentences now serving. Count eight merges with ten. Ten merges with twelve, so **for the carjacking, I'm giving him ten years concurrent with Counts five and six.**

(Emphasis added).

After the court asked appellant if he had any questions about his sentence, the following transpired:

APPELLANT: I have absolutely no idea how much time you just gave me.

THE COURT: Okay, I'm gonna go through it one more time.

APPELLANT: No, you can just give... I just want a total number.

THE COURT: Twenty years.

APPELLANT: All right, that's what I came up with, but I wasn't sure because of all the merges and...

DEFENSE COUNSEL: So he finishes the sentences that he's serving...

THE COURT: Mmm...

DEFENSE COUNSEL: then he has to do the ten for the assault...

THE COURT: Assault.

DEFENSE COUNSEL: ... and the...

THE COURT: Then the ten years...

DEFENSE COUNSEL: ... ten years for the car... the car...

THE COURT: **Escape and the carjacking run side by side**

DEFENSE COUNSEL: Well, okay.

THE COURT: Mmm...

DEFENSE COUNSEL: Okay, so that's twenty and...

THE COURT: And **on that second ten years** his parole's gonna be calculated based upon the fact that **the carjacking** is a violent crime and he won't be eligible for parole until he serves fifty percent of his sentence.

(Emphasis added).

The court indicated on three separate occasions that the sentence for carjacking was imposed concurrent to the sentence for escape. The first time was when the court initially imposed the 10-year sentence for carjacking: “ten years on the carjacking ... concurrent

with the escape.” The second time was when the court reviewed the sentence with appellant: “Escape and the carjacking run side by side.” And, the third time was when the court explained appellant’s parole eligibility on “that second ten years” for the carjacking offense. Thus, the transcript of the sentencing hearing clearly reflects that the court imposed the sentence for carjacking concurrent to the sentence for escape.

As a result, we hold that appellant’s sentence is not illegal because the court imposed the sentence for carjacking concurrent only to the sentence for escape and not to the sentence for second-degree assault. To the extent that appellant’s commitment record and docket entries state to the contrary, we remand the case to the circuit court to correct them.

JUDGMENT OF THE CIRCUIT COURT FOR CAROLINE COUNTY AFFIRMED. CASE REMANDED WITH INSTRUCTIONS TO CORRECT THE COMMITMENT RECORD AND DOCKET ENTRIES CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLANT.