

Circuit Court for Baltimore City
Case Nos: 18414213,14

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 761

September Term, 2019

MARANDO E. WARTHEN

v.

STATE OF MARYLAND

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 16, 2020

*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.

Marando E. Warthen appeals from the denial, by the Circuit Court for Baltimore City, of his motion to correct an illegal sentence. Because the court did not err in denying the motion, we shall affirm the judgment.

In 1984, Mr. Warthen was charged in two separate indictments with murder and related offenses following the shooting deaths of two persons at a private club in Baltimore. The cases were tried together before a jury, which found Mr. Warthen guilty of two counts of second-degree murder; two counts of use of a handgun in the commission of a crime of violence; and two counts of wearing, carrying, transporting a handgun – one count for each offense in case nos. 18414213 and 18414214. The court sentenced him in case no. 18414213 to 30 years’ imprisonment for second-degree murder; 20 years for the use of a handgun, to run consecutive to the murder sentence; and to three years for wearing, carrying, transporting a handgun, to run consecutive to the use of a handgun sentence. In case no. 18414214, the court sentenced him to 30 years’ imprisonment for second-degree murder, to run consecutive to the sentence imposed in case no. 18414213; 20 years for the use of a handgun, to run consecutive to the previously imposed sentences; and it merged the conviction for wearing, carrying, transporting a handgun conviction with the same offense in case no. 18414213 and, stated, “therefore, no sentence will be imposed” for that count. The total term imposed was 103 years’ imprisonment. This Court affirmed the convictions. *Warthen v. State*, No. 193, Sept. Term, 1985 (filed October 29, 1985).

In 1989, Mr. Warthen filed a petition for a writ of habeas corpus. He challenged his confinement on two grounds: (1) that the consecutively run sentences were ambiguous because they had no specific commencement and end dates, and (2) the sentence for

wearing, carrying, transporting a handgun could not be run consecutively to the sentence for use of a handgun. The circuit court rejected the first contention but found merit in the second. Relying on *Hunt v. State*, 312 Md. 494, 500 (1988), the circuit court concluded that, given that Mr. Warthen was sentenced for use of a handgun, he should not be punished separately for wearing, carrying, transporting a handgun. Accordingly, the circuit court struck the three-year sentence for count 3 in case no. 18414213.

In 2018, Mr. Warthen, representing himself, filed a Rule 4-345(a) motion to correct an illegal sentence in which he asserted that his sentence for wearing, carrying, transporting a handgun under case no. 18414214 should also be struck. He further asserted that, because the sentences imposed in case no. 18414214 “were linked through count 3” (wearing, carrying, transporting a handgun) in case no. 18414213, the court in 1989 should have articulated how those sentences would be “re-link[ed]” following the striking of the sentence for wearing, carrying, transporting a handgun in case no. 18414213. Because the court failed to make such an announcement, Mr. Warthen maintained that, under the rule of lenity, the sentences in case no. 18414214 should be run concurrent with the sentences in case no. 18414213.

The circuit court denied the motion. First, the court pointed out that no sentence had ever been imposed for the wearing, carrying, transporting a handgun under case no. 18414214, so there was no sentence to strike. Second, the court found that there was “no reason” to alter the order in which the remaining sentences are to be served, noting that the court in 1989 found nothing ambiguous or improper about the imposition of consecutive sentences. To the extent that Mr. Warthen was asking the court to modify his sentences to

run them concurrently, the court noted that such a request had not been timely filed under Rule 4-345(e) and declined to do so.

On appeal, Mr. Warthen reiterates the same contentions he made in the circuit court, that is, (1) the court should have struck his sentence for wearing, carrying, transporting a handgun in case no. 18414214, and (2) under the rule of lenity, the sentences imposed in case no. 18414214 must be run concurrent with the sentences in case no. 18414213. We disagree and hold that the circuit court did not err in denying the motion to correct an illegal sentence.

First, we agree with the circuit court that Mr. Warthen is not serving a sentence for wearing, carrying, transporting a handgun. Although the jury convicted Mr. Warthen of two counts of wearing, carrying, transporting a handgun, the court in 1984 merged those convictions and imposed a single sentence for that offense, which the court struck in 1989. To the extent that Mr. Warthen’s commitment record has not been corrected to reflect that the sentence for wearing, carrying, transporting a handgun has been struck, he may remedy that by filing a motion to correct the commitment record pursuant to Rule 4-351. *See Bratt v. State*, ___ Md. ___ (No. 39, Sept. Term, 2019) (filed April 28, 2020), slip op. at 25 (“Maryland Rule 4-351 is the appropriate vehicle for achieving a correction of the commitment record.”).

Second, when the circuit court struck the wearing, carrying, transporting sentence in 1989 because it should have merged for sentencing purposes with the use of a handgun conviction, the effect was simply to take that three-year sentence out of the sentencing lineup. *See Butcher v. State*, 196 Md. App., 477, 492 (2010) (holding that when a sentence in

a series of consecutive sentences is vacated, “the next valid consecutive sentence began at the time set for the commencement of the invalidated consecutive sentence.”). Here, upon the striking of the wearing, carrying, transporting sentence in 1989, the sentences continued to run as originally ordered in 1984, except that the struck sentence was no longer in the line-up: 30 years for second-degree murder (count 1, case no. 18414213), 20 years for use of a handgun (count 2, case no. 18414213), ~~3 years (count 3, case no. 18414213)~~, 30 years for second-degree murder (count 1, case no. 18414214), 20 years for the use of a handgun (count 2, case no. 18414214).

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