

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0848

September Term, 2014

ANTHONY E. ROBINSON

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: September 14, 2015

*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.

This appeal arises from a decision by the Circuit Court for Harford County denying Anthony E. Robinson’s motion to correct illegal sentence.

PROCEDURAL HISTORY

After a jury trial on April 11-15, 2011, Robinson was convicted of two counts of third-degree sexual offense and one count of kidnapping. He was found to be eligible for and received enhanced penalties for those crimes. Specifically, he was sentenced as a repeat sex offender to two consecutive life terms for the two third-degree sexual offenses. And, as a third-time violent offender, he was also sentenced to a consecutive term of twenty-five years without parole for the kidnapping conviction.

On direct appeal to this Court, we reversed, in part, and remanded the case to the circuit court with directions to vacate one of the life sentences and merge one of the convictions for third-degree sexual assault into the other. At a resentencing hearing necessitated by that decision, the circuit court again found Robinson eligible for the enhanced penalties and sentenced Robinson to one life term as a repeat sex offender for the third-degree sexual offense and to a consecutive term of twenty-five years without parole as a third-time violent offender for the kidnapping. Pursuant to this Court’s direction, the second conviction for third-degree sexual offense was merged. Robinson’s subsequent petition for writ of certiorari was denied by the Court of Appeals.

On May 13, 2014, Robinson, as a self-represented litigant, filed a motion to correct illegal sentence, which was denied. This timely appeal followed.

The thrust of Robinson’s appeal is that the circuit court erred in denying his motion to correct illegal sentence because, he believes, the State failed to establish his eligibility

for the penalty enhancements both as a repeat sex offender and as a third-time violent offender.¹

BACKGROUND

To satisfy its burden of proving Robinson’s eligibility for these enhanced penalties, at the resentencing hearing the State put on evidence in the form of: (1) certified copies of some but not all of Robinson’s prior convictions; (2) a pre-sentence investigation (“PSI”) report; and (3) testimony from Detective Jan Hugh Ryan, an expert in fingerprint examination. As part of Detective Ryan’s testimony, he referred to certain fingerprint cards but the fingerprint cards were not admitted into evidence and are not part of the record on appeal. Cumulatively from this evidence, we glean the following highlights of Robinson’s career in crime:

- **1987 Second Degree Rape (Case No. 87C0213).** We glean from the PSI report that this offense (a violation of CL §3-304) was committed on May 13, 1987. He was sentenced to 20 years’ incarceration with all but 5 years suspended, to be served concurrently to another sentence imposed for daytime housebreaking. The State did not introduce a certified copy of the conviction or attempt to rely on this crime as a predicate for an enhanced penalty.
- **1992 Robbery (Case No. 93C0053).** The State introduced a certified copy of the conviction in this case, which shows that the offense was committed on December 1, 1992. Robinson was found guilty and, on November 18, 1993, was sentenced to 10 years with all but one year suspended followed by one year of probation. There is a notation on the certified conviction that, as of his November 18, 1993 sentencing, Robinson had served 177 days of pre-trial detention. From the four

¹ Robinson also asserts that the circuit court erred in denying his motion to correct illegal sentence because it declined to hold a hearing. Because there is no requirement to hold a hearing on a motion to correct illegal sentence, it was not error for the circuit court to deny Robinson’s motion without a hearing.

corners of the certified conviction, we cannot discern whether Robinson served a term of incarceration. The State’s proof with regard to this conviction also included the testimony of Detective Ryan, the implication of whose testimony was that the fingerprints of the defendant in this case match those of Robinson.

- **1995 Second Degree Rape (Case No. 95C0814).** The State introduced a certified copy of his conviction in this case. The offense occurred on June 13, 1995, and he was arrested that same day. On March 20, 1996, Robinson was found guilty of second degree rape. He was sentenced to a suspended sentence of 20 years and 5 years of supervised probation. The parties agree that he did not serve a term of incarceration in connection with this conviction. The State’s proof with regard to this conviction also included the testimony of Detective Ryan, the implication of whose testimony was that the fingerprints of the defendant in this case match those of Robinson.
- **1995 Attempted Second Degree Rape (Case No. 95C0965).** The State introduced a certified copy of his conviction in this case. The offense occurred on September 24, 1995, and he was arrested that same day. On March 20, 1996, Robinson was found guilty of attempted second degree rape. He was sentenced to a sentence of 20 years’ incarceration with 10 years suspended, to begin on June 13, 1995, followed by five years of supervised probation. There does not seem to be any dispute that he served a term of incarceration for this conviction. For reasons that are unclear (we speculate that it might be due to the loss of a fingerprint card), Detective Ryan was silent about this conviction.

ANALYSIS

In Maryland, “[w]hen the State seeks an enhanced penalty, the State must prove each element of the enhanced penalty beyond a reasonable doubt, including the defendant’s identity in the previous qualifying convictions.” *Bryant*, 436 Md. at 670 (quoting *Dove v. State*, 415 Md. 727, 746 (2010)). If the State failed to do so, the sentence is illegal, *Bowman v. State*, 314 Md. 725, 738 (1989) and may be challenged at any time pursuant to Maryland Rule 4-345(a).

A. “Repeat Sex Offender” Penalty Enhancement

Section 3-313(a) of the Criminal Law Article of the Maryland Code creates the repeat sex offender penalty enhancement. It provides:

(a) *In general.* -- On conviction of a violation of §3-304, §3-306, §3-307, §3-310, or §3-312 of this subtitle, a person who has been convicted on a prior occasion not arising from the same incident of any violation of §§3-303 through 3-306 of this subtitle is subject to imprisonment not exceeding life.

CL§3-313(a). Thus, to satisfy the requirements for a “repeat sex offender” penalty enhancement, the State was required to demonstrate beyond a reasonable doubt: (1) that the current conviction is for rape or attempted rape in the second degree, a sexual offense or attempted sexual offense in the second degree, or a sexual offense in the third degree; and that (2) the same offender (3) has been convicted (4) on a previous occasion (5) not arising from the same incident (6) of rape in the first or second degree or of a sexual offense in the first or second degree. *See* CL §3-313(a). Robinson contests only the sixth element, arguing that his prior convictions were for *attempted* rape in the second degree, which is not a qualifying predicate crime, and not for second-degree rape, which is a qualifying predicate crime.

Although there is some support for Robinson’s position – the PSI report refers to Case No. 95C0814 as a conviction for attempted rape and the State’s Attorney called it that at the resentencing hearing – the certified copy of the conviction in that case established, beyond a reasonable doubt, that in Case No. 95C0814, Robinson was convicted of rape in the second degree. Thus, the State satisfied its burden of proving that Robinson was eligible

for the “Repeat Sex Offender” penalty enhancement of CL §3-313, and his sentence of life incarceration under that provision is not illegal.

B. “Third Conviction of a Crime of Violence” Penalty Enhancement

Section 14-101(d) of the Criminal Law Article creates the penalty enhancement for a third conviction of a crime of violence. The text of the statute is as follows:

(d) *Third conviction of crime of violence.* -- (1) Except as provided in subsection (g) of this section, on conviction for a third time of a crime of violence, a person shall be sentenced to imprisonment for the term allowed by law but not less than 25 years, if the person:

- (i) has been convicted of a crime of violence on two prior separate occasions:
 - 1. in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion; and
 - 2. for which the convictions do not arise from a single incident; and
- (ii) has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

(2) The court may not suspend all or part of the mandatory 25-year sentence required under this subsection.

(3) A person sentenced under this subsection is not eligible for parole except in accordance with the provisions of §4-305 of the Correctional Services Article.

CL §14-101(d). Thus, to satisfy the requirements for a “third conviction of a crime of violence” penalty enhancement, the State must demonstrate beyond a reasonable doubt:

(1) that the current conviction is for a crime of violence enumerated in CL §14-101(a); and

that (2) the same offender (3) has been convicted on two prior separate occasions,² and (4) has served at least one term of confinement. CL §14-101(d).

As to the first element, there is no dispute that Robinson’s current conviction for kidnapping is a crime of violence. CL §14-101(a)(3).

With regard to the second and third elements, the State proved, beyond a reasonable doubt, that Robinson committed the 1992 robbery, which is a qualifying predicate crime. CL §14-101(a)(9). It is also clear that the State proved, beyond a reasonable doubt, that Robinson committed the 1995 second-degree rape, which is a qualifying predicate crime. CL §14-101(a)(8).³ The only remaining requirement for the State to prove was that Robinson previously served a term of confinement in a correctional facility for a crime of violence. CL §14-101(d)(1)(ii).

There is no dispute that Robinson did *not* serve a term of incarceration for his 1995 second-degree rape conviction. Thus, that conviction cannot provide the necessary term of incarceration to establish eligibility for the enhanced penalty. The State offers two other possibilities, namely, the 1992 robbery and the 1995 attempted second-degree rape. Robinson attacks each.

² We are simplifying here. The statute contains timing rules at CL §14-101(d)(1)(i)(1) and (2) to ensure that a single crime rampage or spree cannot be the predicate for this penalty enhancement. Those timing rules are not at issue here.

³ Although the statute enumerates only “rape,” the Court of Appeals has made clear that rape in the second degree qualifies as a crime of violence under CL §14-101(a). *Blandon v. State*, 304 Md. 316, 322 (1985).

First, as to the 1992 robbery, the State claims that Robinson served a term of incarceration, while Robinson claims that he served 353 days of pre-trial detention and, upon receiving a ten year sentence, with all but one year suspended, he was released immediately. Because pre-trial detention does not qualify as a term of incarceration for these purposes, *Stevenson v. State*, 180 Md. App. at 452 (relying on *Melgar v. State*, 355 Md. 339 (1999)), Robinson argues that he did not serve a qualifying term of incarceration. The record does not clearly support either argument.

The certified copy of the 1992 robbery conviction introduced at the resentencing hearing indicates that the sentencing judge back-dated the start of Robinson’s one-year term to May 25, 1993, thus giving him credit for 177 days served in pre-trial detention. We cannot ascertain from the record, however, whether Robinson spent the remaining 188 days of his sentence in a correctional facility or whether he was, as he claims, immediately released, through diminution credits or otherwise. As a result, the State did not meet its burden of proving beyond a reasonable doubt that Robinson served a term of incarceration in a correctional facility in connection with the 1992 robbery.

In his second attack on the State’s proof that he served a term of confinement for a crime of violence, Robinson asserts that the State failed to prove, beyond a reasonable doubt, that he was the man who committed and was sentenced for the 1995 attempted second-degree rape. Robinson maintains that Detective Ryan did not provide any testimony to show that he was the person who committed that crime. In short, he challenges the sufficiency of the evidence with regard to his identity. Robinson’s argument is unavailing.

Despite the lack of testimony from Detective Ryan, there was sufficient evidence from which the sentencing judge could conclude that the defendant in the 1995 attempted second-degree rape case was Robinson. The evidence presented at the sentencing hearing established that on June 13, 1995, a man named Robinson committed a second-degree rape. Through Detective Ryan's testimony, the State proved that the Robinson who committed the June 13th rape was appellant. On September 24, 1995, a man named Robinson committed an attempted second-degree rape. The two cases were called for trial on the same day, March 20, 1996, in the same courthouse, before the same trial judge. The defendants in both cases had the same names, Anthony Eugene Robinson, and the same date of birth, March 16, 1965. Lastly, the defendants in both cases were represented by the same defense counsel and prosecuted by the same Assistant State's Attorney. All of this evidence was sufficient to support the conclusion that the Anthony Eugene Robinson who was convicted in the 1995 attempted second-degree rape case, is the same Anthony Eugene Robinson in the instant case. Because he served a term of incarceration in connection with the 1995 attempted second-degree rape, Robinson was eligible for the enhanced penalty under CL §14-101. As a result, the enhanced penalty of twenty-five years was not illegal.

JUDGMENTS AFFIRMED. COSTS TO BE PAID BY HARFORD COUNTY.