Circuit Court for Prince George's County
Case No: CT120803X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 850

September Term, 2018

MICHAEL JEROME JOHNSON

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: June 6, 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 2013, following a jury trial in the Circuit Court for Prince George's County, Michael Jerome Johnson, appellant, was convicted of attempted first-degree burglary, attempted third-degree burglary, fourth-degree burglary, and malicious destruction of property. The court sentenced him to 20 years' imprisonment for attempted first-degree burglary and to lesser terms for the remaining convictions, which all merged with the sentence for attempted first-degree burglary. On appeal, Mr. Johnson argued that there was insufficient evidence to convict him of attempted first-degree burglary and attempted third-degree burglary. This Court disagreed and affirmed the judgments. *Johnson v. State*, No. 182, September Term, 2013 (filed February 19, 2014), *cert. denied*, 438 Md. 740 (2014).

In 2018, Mr. Johnson filed a motion to correct an illegal sentence in which he asserted that he was "convicted of a non-existing crime." The circuit court denied the motion. On appeal, Mr. Johnson continues to maintain that attempted first and third-degree burglaries are "non-existing crimes." He states that "there was no particular specific intent to steal, no violence was used, was not in possession of burglar's tools, thus the *actus reus* of all degree of burglary's subvarieties did not exist, but just a rogue and vagabond subvarieties." In short, Mr. Johnson contends that his sentence is illegal because the aforementioned convictions are invalid.

We affirm the court's decision to deny relief. On direct appeal, this Court addressed the crimes Mr. Johnson is challenging and held that the evidence was sufficient to support those convictions. And the 20-year sentence for attempted first-degree burglary is legal. *See* § 1-201 of the Criminal Law Article ("The punishment of a person who is convicted

of an attempt to commit a crime may not exceed the maximum punishment for the crime attempted."); § 6-202(c) of the Criminal Law Article (A person convicted of first-degree burglary "is subject to imprisonment not exceeding 20 years.").[1]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[1] Mr. Johnson's reliance on *Dabney v. State*, 159 Md. App. 225 (2004) is misplaced. In that case, we held "that the rogue and vagabond subvariety of fourth-degree burglary that was the target of the attempt in this case was itself a crime in the nature of an attempt." *Id.* at 253. "We further [held] that there is no such cognizable crime as an attempt to commit a crime in the nature of an attempt" and, therefore, Mr. Dabney, who was convicted of attempted fourth-degree burglary, "was convicted of a non-existent crime[.]" *Id.* Unlike Mr. Dabney, Mr. Johnson was not convicted of an attempt to commit a crime which in itself is a crime in the nature of an attempt.