

Circuit Court for Baltimore City
Case No.: 106209002

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 925

September Term, 2021

DAVID HOFF

v.

STATE OF MARYLAND

Reed,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 20, 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.

In 2019, appellant David Hoff filed a motion to correct an illegal sentence in the Circuit Court for Baltimore City claiming that, upon revocation of his probation in 2014, the court had imposed an illegal sentence when it had ordered him to serve 20 years of previously suspended time, for solicitation to commit murder, consecutive to any outstanding sentence. When the court denied the motion, Mr. Hoff appealed. We remanded the case to the circuit court, without affirmance or reversal, stating:

[I]n 2014, the court revoked Mr. Hoff’s probation and ordered him to serve the previously suspended 20 years [for solicitation to commit murder] and ran that time consecutively to “all outstanding and unserved Maryland sentences.” If Mr. Hoff is correct that he was still serving the 2007 robbery with a dangerous weapon sentence when he was ordered to serve the 20 years on the solicitation sentence, running the 20-year term consecutive to the robbery sentence would constitute an illegality in the solicitation sentence given that the two sentences were originally ordered to run concurrent with each other. Because we cannot say for certain given the limited record before us that Mr. Hoff, in fact, was serving the 2007 robbery [sentence] when his probation was revoked in the solicitation case, we shall remand this case for further proceedings and, if necessary, an amendment to the commitment record to reflect that the 2014 solicitation sentence runs concurrently with the 2007 robbery sentence.

Hoff v. State, No. 2639, September Term, 2019 (Md. App. February 1, 2021), slip op. at 9-10.

It appears that, on August 10, 2021, the court held a hearing,¹ and on August 23, 2021 issued an amended commitment record reflecting that the 20-year sentence for solicitation to commit murder runs “concurrent with any other outstanding sentence or

¹ Although Mr. Hoff cites to a transcript purportedly from the August 10, 2021 hearing, no such transcript is in the record before us.

unserved sentence and begin[s] on July 2, 2014.”² The self-represented Mr. Hoff appeals that decision. We shall affirm the judgment.

On appeal, Mr. Hoff claims that, at the August 10, 2021 hearing, which he characterizes as a “resentencing hearing,” (1) the court erred in denying his request to “present mitigating evidence and argument”; (2) the court erred in not sentencing him pursuant to the Justice Reinvestment Act (“JRA”), even though he acknowledges that the JRA was not in effect when his probation was revoked in 2014; and (3) the court erred in denying his request to withdraw the guilty plea he had entered in the case in 2007.

The State responds that the purpose of this Court’s remand was to determine whether he was serving the 2007 robbery sentence when the court revoked his probation in the solicitation case and, if so, to amend that commitment record in the latter case to reflect that the solicitation sentence runs concurrently with the robbery sentence. The State maintains that none of the “grievances” Mr. Hoff raises on appeal relate to the purpose of the limited remand. We agree with the State.

In the prior appeal, we did not affirm or reverse the court’s denial of Mr. Hoff’s motion to correct an illegal sentence and we certainly did not vacate the 20-year sentence for solicitation that was ordered to be served upon the 2014 revocation of his probation. Because we could not tell from the record then before us whether Mr. Hoff was serving the 2007 robbery sentence when his probation was revoked in the solicitation case, the case

² The docket entries reflect that on October 7, 2021, a three-judge panel reviewed Mr. Hoff’s application for review of sentence and ruled that “the sentence remain unchanged.”

was remanded so the circuit court could make that factual determination. That determination was necessary because if Mr. Hoff was in fact serving the 2007 robbery sentence when his probation was revoked and he was ordered to serve the 20 years in the solicitation case, running the solicitation sentence consecutive to the robbery sentence would have created an illegality for the reasons we explained in the prior appeal. *See Hoff v. State*, No. 2639, September Term, 2019, slip op. at 6-10.

In other words, the case was remanded simply for a factual determination as to whether Mr. Hoff was serving the 2007 robbery sentence when his probation in the solicitation case was revoked in 2014 and if he was, then our instructions were to amend the commitment record “to reflect that the 2014 solicitation sentence runs concurrently with the 2007 robbery sentence.” *Slip op.* at 10. Consequently, we hold that the circuit court did not err when, upon remand, it (1) denied Mr. Hoff’s request to present mitigating evidence and argument related to the term of his sentence; (2) denied his request to resentence him in accordance with the Justice Reinvestment Act; and (3) denied his request to withdraw the guilty plea he entered in 2007.³

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

³ In his Reply brief, Mr. Hoff raises additional issues, including allegations that he has suffered prejudice related to his parole eligibility date and accumulation of diminution credits. Those issues, however, are not properly before us in this appeal.