

Circuit Court for Baltimore City
Case Nos.: 196338019, 21

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 944

September Term, 2019

HERBERT CRAWFORD

v.

STATE OF MARYLAND

Nazarian,
Gould,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 5, 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.

Herbert Crawford appeals from an order of the Circuit Court for Baltimore City denying his motion to alter or amend the court’s order of April 24, 2019, which denied his motion to re-open his post-conviction proceedings. We shall affirm the judgment.

In 1998, a jury convicted Mr. Crawford of first-degree murder, use of a handgun in the commission of a crime of violence, and conspiracy to commit murder. The court sentenced him to life without parole for the murder and to concurrently run terms of twenty years’ imprisonment for the other convictions. On appeal, he challenged, among other things, the sufficiency of the evidence to support the handgun conviction because the weapon used to shoot the victim was not recovered and, although there was some evidence as to the caliber of the bullet, there was no evidence that the weapon used fell within the statutory definition of a “handgun.” We agreed with Mr. Crawford and held that the jury “could only speculate as to the type of weapon used” and, therefore, the “evidence was insufficient to prove beyond a reasonable doubt that appellant used a ‘handgun’ to commit [the] murder.” *Crawford v. State*, No. 1766, Sept. Term, 1998 (filed September 8, 1999), slip op. at 14-15. Mr. Crawford also argued that the evidence was insufficient to support the conspiracy conviction. We concluded that “there was ample evidence of a conspiracy to murder between appellant [Mr. Crawford] and Abdul Rahim Burley,” but noted that Mr. Crawford “was indicted for conspiring with Mark Hemphill to murder” the victim. *Id.* at 16. Accordingly, we affirmed the conviction for murder, but reversed the convictions for use of a handgun in the commission of a crime of violence and conspiracy to commit murder. Mr. Crawford’s subsequent petition for post-conviction relief was denied.

In October 2018, Mr. Crawford, representing himself, filed a motion to re-open his post-conviction proceedings. *See* Md. Code, Criminal Procedure, § 7-104 (“The court may reopen a postconviction proceeding that was previously concluded if the court determines that the action is in the interest of justice.”). In that motion, Mr. Crawford claimed that, when this Court, on appeal, “acquitted him” of the handgun and conspiracy offenses, but affirmed the first-degree murder conviction, we created an “inconsistent verdict” because the “crimes were interdependent upon each other or stemmed from the same act.” He further asserted that this Court’s “acquittal” of the handgun and conspiracy offenses “necessitates a finding of insufficient evidence of his first-degree murder conviction.” In short, he maintained that this Court should have “acquitted [him] of all charges or awarded [him] a new trial.” He relied on cases discussing inconsistent verdicts that were decided following his appeal, namely, *Price v. State*, 405 Md. 10 (2008), *Tate v. State*, 182 Md. App. 114 (2008), and *Givens v. State*, 449 Md. 433 (2016).

About 10 days after Mr. Crawford filed his motion to re-open, the State filed a request to extend the time to file its response and it noted its intent to defend.¹ Apparently the State never filed a response, although we note that a response by the State to a motion to re-open is not required by statute or rule.

¹ The State’s pleading appears to be a “boilerplate” request in response to a petition for post-conviction relief. Under the post-conviction rules, the State shall file a response to a petition for post-conviction relief within 15 days of notice of its filing, or within such further time as the court may order. *See* Maryland Rule 4-404.

On April 26, 2019, the court denied the motion after it “determined that reopening post-conviction proceedings is not in the interest of justice[.]” Mr. Crawford did not seek leave to appeal,² but instead filed a “motion to alter or amend” the judgment of denial, asserting that his motion to re-open was “based upon a new interpretation and principles of law under *Givens v. State*, 449 Md. 443 (2016).” He also stated that, given that the court had denied his motion without the benefit of a State response on the merits of his claim, the court could not have given his motion to re-open “full and fair consideration” prior to rendering its decision. The court denied his motion to alter or amend the judgment. Mr. Crawford appeals that ruling.

We hold that the circuit court did not err or abuse its discretion in denying Mr. Crawford’s motion to alter or amend the judgment because it did not abuse its discretion in denying his motion to re-open his post-conviction proceeding. Contrary to his belief, this Court’s decision in his direct appeal did not “acquit” him of the handgun or conspiracy charges. Rather, we reversed the handgun conviction based on insufficient evidence that the weapon used to kill the victim was in fact a “handgun” as that term is defined in the statute. We reversed the conspiracy conviction because the indictment charged him with conspiring with Mark Hemphill to murder the victim, but the evidence at trial established that he had conspired with Abdul Rahim Burley. In short, the reversal of the handgun and conspiracy convictions did not render the murder conviction “inconsistent.” Neither

² A person seeking appellate review of a ruling on a motion to re-open a post-conviction proceeding must file an application for leave to appeal. *See* Md. Code, Criminal Procedure, § 7-109(a).

conspiracy to commit murder nor use of a handgun in the commission of a crime of violence are lesser included offenses of first-degree murder. In other words, because Mr. Crawford's claim was obviously meritless, the circuit court properly exercised its discretion in denying his motion and, moreover did not need to wait for a response from the State.

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