

Circuit Court for Baltimore County  
Case No. 3K09-0841

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1035

September Term, 2017

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ALBERT L. JOHNSON

v.

STATE OF MARYLAND

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Woodward, C.J.,  
Eyler, Deborah S.,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: July 5, 2018

\*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 2009, a jury in the Circuit Court for Baltimore County convicted Albert L. Johnson, appellant, of first-degree assault and second-degree assault. The court sentenced Johnson to twenty-five years' imprisonment for first-degree assault and merged the conviction for second-degree assault for sentencing purposes. This Court affirmed the judgments. *Johnson v. State*, No. 2395, September Term, 2009 (filed August 1, 2011).

In 2017, Johnson filed a motion to correct an illegal sentence pursuant to Md. Rule 4-345(a) in which he alleged that his sentence was illegal because “he was never indicted for second degree assault and that offense is necessary in order to sustain a conviction for first degree assault.” Johnson appeals the circuit court’s denial of his motion. We affirm.

Although Johnson is correct that the indictment did not expressly charge him with “second-degree assault,” count two of the indictment charged him with first-degree assault. A charge of first-degree assault encompasses a charge for second-degree assault. Section 3-206 of the Criminal Law Article of the Maryland Code, which governs charging documents for assault, provides: “A charge of assault in the first degree also charges a defendant with assault in the second degree.” Crim. Law, § 3-206(c). In other words, the State was not required to charge Johnson separately for second-degree assault as it was included in the charge for first-degree assault. Accordingly, the circuit court did not err in denying Johnson’s motion to correct an illegal sentence.

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