

Circuit Court for Baltimore City  
Case No.: 120268004

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 1136

September Term, 2023

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ANTHONY FINNELL

v.

STATE OF MARYLAND

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Nazarian,  
Reed,  
Sharer, J. Frederick  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: April 1, 2024

\*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

On September 20, 2021, Mr. Finnell pleaded guilty, before the Honorable Melissa Phinn in the Circuit Court for Baltimore City, to possession with intent to distribute cocaine and was sentenced to six years' imprisonment, with all but time served suspended, to be followed by a two-year term of supervised probation.

Less than three months after beginning his term of probation, Mr. Finnell was charged with distribution of a controlled dangerous substance in case no. 121363007. The Maryland Judiciary Case Search reflects the "incident date" of this new offense was December 6, 2021. On May 10, 2022, Mr. Finnell pleaded guilty to the charge and was sentenced by Judge Phinn to three years' imprisonment. That same day, Mr. Finnell admitted to violating his probation in this case and Judge Phinn revoked his probation and ordered him to serve three years of his previously suspended time, to run consecutive to the sentence imposed in Case No. 121363007. Mr. Finnell did not seek leave to appeal.

More than a year later, the court docketed a letter from Mr. Finnell addressed to Judge Phinn in which he sought a correction or clarification to the Commitment Record in this case. He maintained that his "original plea" agreement provided that the sentence imposed in this case would be "concurrently imposed" and the court violated the terms of the original plea agreement when, upon revocation of his probation in 2022, the previously suspended time he was ordered to serve was run consecutive to the sentence in case no. 121363007. He requested "specific performance of the originally imposed term as concurrent, as was indicated in the original plea agreement[.]" The court denied relief. Mr. Finnell appeals that ruling. For the reasons to be discussed, we shall affirm the judgment.

## DISCUSSION

On appeal, the self-represented Mr. Finnell asserts that the court’s May 2022 order directing him to serve three years of his previously suspended time consecutive to the sentence in case no. 121363007 “unlawfully increased the sentence that was [originally] imposed as part of the plea agreement,” which had called for a concurrent sentence.

In response, the State first points out that Mr. Finnell has not produced the transcript from the 2021 plea hearing and, thus, there is no support in the record before this Court for his claim that his plea in this case was entered pursuant to a binding plea agreement calling for the sentence to be run concurrent with any other sentence. We agree with the State that it was Mr. Finnell’s responsibility, as the appellant in this case, to order a transcript of any relevant proceedings necessary for our review of the issue raised on appeal. *See* Md. Rule 8-411(a). *See also Kovacs v. Kovacs*, 98 Md. App. 289, 303 (1993) (The party asserting error has the burden to show “by the record” that an error occurred, and the “failure to provide the court with a transcript warrants summary rejection of the claim of error.”). Accordingly, we are not required to review his claim.

But even if Mr. Finnell is correct in asserting that his 2021 guilty plea in this case was entered pursuant to a binding plea agreement calling for the sentence to run concurrent with any outstanding sentence, the court’s 2022 order directing him to serve three years of his previously suspended time consecutive to the sentence imposed in case no. 121363007 would not have violated that agreement. Mr. Finnell committed the offense for which he was charged in case no. 121363007 *after* he pleaded guilty and was sentenced in this case. Hence, the sentence imposed in case no. 121363007 was not contemplated—as the crime

had not yet been committed—when Mr. Finnell pleaded guilty and was sentenced in this case.

Accordingly, we agree with the State that the three years’ imprisonment the court ordered Mr. Finnell to serve after the revocation of his probation in this case was not illegal, even though it was ordered to run consecutive to the sentence in case no. 121363007. As we have previously held, a trial court has “the unfettered prerogative to make [a] reinstated sentence of incarceration [upon revocation of probation] either concurrent with or consecutive to” an intervening sentence then in effect. *DiPietrantonio v. State*, 61 Md. App. 528, 535 (1985).

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