Circuit Court for Prince George's County
Case No. CT-971401-X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1258

September Term, 2021

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ALFRED SHINARD

v.

STATE OF MARYLAND

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Berger,
Nazarian,
Arthur,

JJ.

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Opinion by Berger, J.

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Filed: July 26, 2022

In 1998, a jury sitting in the Circuit Court for Prince George's County found appellant, Alfred Shinard, guilty of armed carjacking, use of a handgun in the commission of a felony or crime of violence, first-degree assault, and other offenses. Following merger of lesser-included offenses, the court sentenced him to twenty years' imprisonment for armed carjacking; a consecutive term of ten years' imprisonment, the first five without the possibility of parole, for use of a handgun in the commission of a felony or crime of violence; and an additional consecutive term of ten years' imprisonment for first-degree assault.

In 2018, Shinard filed a motion to correct an illegal sentence, claiming that the sentence pronounced in open court (which, he claimed, was in conflict with the sentence as reflected in the docket entries and commitment record) was illegal. After the circuit court denied that motion, he noted this appeal. We shall affirm.

## BACKGROUND

In May 1997, Shinard and an accomplice committed an armed robbery and carjacking in Forestville, Maryland. *Shinard v. State*, No. 754, Sept. Term 1998, slip op. at 1-2 (filed May 24, 1999). The victims were Vernon Proctor, the owner of the car, and Derrick Goodwin, Proctor's friend. *Id.* Two months later, Shinard was charged via an indictment returned by the Grand Jury for Prince George's County with:

> Count 1, armed carjacking of Vernon Jerome Proctor;
>
> Count 2, use of a handgun in the commission of a felony or crime of violence;
>
> Count 3, assault in the first degree of Mr. Proctor;

Count 4, use of a handgun in the commission of a felony or crime of violence;

Count 5, assault in the first degree of Derrick Bernard Goodwin;

Count 6, use of a handgun in the commission of a felony or crime of violence;

Count 7, robbery with a deadly weapon of Mr. Proctor;

Count 8, use of a handgun in the commission of a felony or crime of violence;

Count 9, robbery with a deadly weapon of Mr. Goodwin;

Count 10, use of a handgun in the commission of a felony or crime of violence;

Count 11, carjacking of Mr. Proctor;

Count 12, use of a handgun in the commission of a felony or crime of violence;

Count 13, conspiracy to commit carjacking;

Count 14, use of a handgun in the commission of a felony or crime of violence;

Count 15, assault in the second degree of Mr. Proctor; and

Count 16, assault in the second degree of Mr. Goodwin.

The following year, the case proceeded to a jury trial. Following the conclusion of the State's case-in-chief, the circuit court granted the defendant's motion for judgment of acquittal as to six of the seven counts charging use of a handgun in the commission of a felony or crime of violence. The remaining counts went to the jury. The jury acquitted

Shinard of Count 9, robbery with a deadly weapon of Mr. Goodwin. The jury found Shinard guilty of the remaining nine offenses:

> Count 1, armed carjacking of Mr. Proctor;
>
> Count 3, assault in the first degree of Mr. Proctor;
>
> Count 5, assault in the first degree of Mr. Goodwin;
>
> Count 7, robbery with a deadly weapon of Mr. Proctor;
>
> Count 8, use of a handgun in the commission of a felony or crime of violence;
>
> Count 11, carjacking of Mr. Proctor;
>
> Count 13, conspiracy to commit carjacking;
>
> Count 15, assault in the second degree of Mr. Proctor; and
>
> Count 16, assault in the second degree of Mr. Goodwin.

In May 1998, a sentencing hearing was held. The circuit court merged all but three of the convictions[1] and sentenced Shinard on Counts 1, 5, and 8. During the sentencing hearing, the following colloquy occurred:

> THE COURT: . . . All right, that leaves us, then, according to what I have. **Armed carjacking, the use of a**

[1] The court erred on the side of caution, merging the conviction for conspiracy to commit carjacking into the conviction for the substantive crime, even though there is a wealth of decisional law holding to the contrary. *See*, *e.g.*, *United States v. Felix*, 503 U.S. 378, 391 (1992) (noting "the established doctrine that a conspiracy to commit a crime is a separate offense from the crime itself"); *Khalifa v. State*, 382 Md. 400, 436 (2004) (observing that "a substantive offense is generally distinct from the crime of conspiracy to commit the offense") (citing *Grandison v. State*, 305 Md. 685, 759, *cert. denied*, 479 U.S. 873, *reh'g denied*, 479 U.S. 1001 (1986)).

**handgun in the commission a crime of violence, first degree assault** of [Derrick] Goodwin. The only three I have.

[DEFENSE COUNSEL]: That is what I have as well.

THE COURT: All right.

[DEFENSE COUNSEL]: **And for the record, I have that as count 1, count 5 and count 8.**

THE COURT: Is that what you say, Madam Clerk?

THE CLERK: You have the file. I don't know.

THE COURT: I know. Well, that's the reason I needed the file. One, five and eight. We'll go through the indictment, make sure we have it right, but I think it's one, five and eight.

[DEFENSE COUNSEL]: **Yes, I'm giving it as to the indictment.**[2]

THE COURT: That's what counts. This sentencing guideline sheet is not filled out right that way, as far as the counts.

As to count one, armed carjacking of Vernon Jerome Proctor. **Before I do that, I want to make sure. Yes, counts one, five and eight.**

[Recitation of Shinard's prior criminal record]

**As to count one, armed carjacking, I sentence you to 20 years. For count five, for the use of a handgun in the commission of a crime, I sentence you to 10 years, the first five without parole. And that's consecutive to the carjacking.**

[2] We note that it was defense counsel who, in response to the sentencing judge's inquiry, initially misstated the numbering of the counts. The State does not claim that there was invited error in this case, although a colorable argument could be made in that regard.

> **For the assault** on [Derrick] Goodwin, **count eight, I sentence you to 10 years, and that's consecutive to the time you had in the use of a handgun, consecutive to the time that you had in the armed carjacking.**
>
> [Explanation of post-trial rights]
>
> How much credit does the man have?
>
> [DEFENSE COUNSEL]: He's been incarcerated since December 31st, 1997. **And for the record, count five was the first-degree assault and count eight was the handgun.**
>
> THE COURT: **Okay, I got it backwards.** That was just because that was the way I had it written down here.

(Emphasis added.)

The docket entries indicated the sentences as "COUNT 1 FOR A PERIOD OF 20 YEARS.; . . . COUNT 5 FOR A PERIOD OF 10 YEARS CONSECUTIVE TO; COUNT 1.; . . . COUNT 8 FOR A PERIOD OF 10 YEARS, 5 YEARS, WITHOUT; PAROLE PURSUANT TO ARTICLE 27, SECTION 36 B (D).; CONSECUTIVE TO COUNT 5[,]" with the remaining counts merged. The original commitment record incorrectly stated that the sentence for Count 8, use of a handgun in the commission of a felony or crime of violence, was concurrent with the sentence for Count 5, but an amended commitment record was issued September 30, 1998, correcting that error and indicating that all sentences were consecutive to one another.

Shinard appealed, raising three claims, none of which is pertinent to the instant appeal.[3] We affirmed the judgments in an unreported opinion. *Shinard*, No. 754, Sept. Term 1998. In 2006, Shinard filed a motion to revise the judgment on the ground of mistake or irregularity, claiming (as he does in this appeal) that there was a discrepancy between the court's oral pronouncement of sentence and the commitment record. After the circuit court denied that motion, he appealed. In an unreported opinion, we affirmed the circuit court's denial of Shinard's revisory motion. *Shinard-Bey v. State*, No. 899, Sept. Term 2006 (filed Aug. 16, 2007).[4]

Shinard unsuccessfully sought postconviction relief. *Shinard v. State*, No. 1116, Sept. Term 2002 (filed Feb. 13, 2003). He also filed habeas petitions[5] in both state and federal court, as well as a "Motion for Appropriate Relief," raising claims similar to that raised in this appeal, but those petitions and motions likewise were unsuccessful.[6]

[3] In that appeal, Shinard claimed that the trial court erred in denying his motion for a mistrial, that the evidence was insufficient to prove armed carjacking, and that the trial court erred in refusing to instruct the jury on aiding and abetting. *Shinard*, No. 754, Sept. Term 1998, slip op. at 1.

[4] At various times, Shinard has also identified himself by the surname Shinard-Bey.

[5] For example, in one of his habeas petitions, Shinard alleged that "the commitment issued in [his criminal case] differs from the oral pronouncement of sentence." In a second habeas petition, filed in 2012, Shinard claimed that the court "GOT IT BACKWARD" in its oral pronouncement of sentence.

[6] In 2007, Shinard filed a motion to correct an illegal sentence, claiming that his sentence was illegal because it denied him parole eligibility beyond what was statutorily mandated, but he withdrew that motion "with prejudice." In 2012, Shinard filed a "Motion for Appropriate Relief," raising a claim similar to the one raised in his prior habeas petitions (continued)

Finally, in December 2018, Shinard filed a motion to correct an illegal sentence, claiming that there was a discrepancy between the court's oral pronouncement of sentence and his commitment record and that the sentence as pronounced in open court was illegal. Following a hearing, the circuit court denied that motion, prompting this appeal.

## DISCUSSION

### Standard of Review

Whether a sentence is illegal under Maryland Rule 4-345(a) "is a question of law that is subject to de novo review." *State v. Crawley*, 455 Md. 52, 66 (2017) (citing *Meyer v. State*, 445 Md. 648, 663 (2015)).

### Parties' Contentions

According to Shinard, the transcript of his sentencing hearing discloses that the court sentenced him to ten years' imprisonment, the first five without the possibility of parole, for first-degree assault, and an additional term of ten years' imprisonment for use of a handgun in the commission of a felony or crime of violence, instead of the other way around. Moreover, he asserts, although defense counsel alerted the sentencing court to its mistake in pronouncement, and the court acknowledged its mistake, it nonetheless did not correct it, as permitted under Maryland Rule 4-345(c). Thus, according to Shinard (and

and in this appeal. That motion was denied, and his ensuing appeal was dismissed. None of these proceedings resulted in an appellate decision on the merits that could have barred the present appeal under the law of the case doctrine. *See Scott v. State*, 379 Md. 170, 183-85 (2004) (holding that, under Maryland law, application of the law of the case doctrine requires a prior appellate decision on the merits).

contrary to the docket entries and commitment record), the sentence as it currently stands includes a term of ten years' imprisonment, the first five without the possibility of parole, for first-degree assault, and a term of ten years' imprisonment for use of a handgun in the commission of a felony or crime of violence (but without the mandatory five-year no-parole provision). Because each of those sentences is illegal, he contends that the circuit court erred in denying his motion to correct his sentence.[7]

The State counters that Shinard's claim is barred by the law of the case doctrine. The State observes that Shinard previously filed a "Motion for Exercise of Revisory Power Over an Enrolled Judgment, Citing Mistake and Irregularity in the Sentencing Proceedings" on the ground of mistake or irregularity based upon the same discrepancy between the sentence pronounced in open court and the sentence recorded in his commitment record. The State asserts that the argument raised in this appeal is premised upon the same underlying mistake or irregularity. The circuit court denied Shinard's prior

[7] Although it might appear that the relief Shinard requests is a mere formality that would not affect the aggregate sentence he is serving, if we were to grant the relief he requests (and assuming that, on remand, the circuit court would simply swap the numbers of the counts), he would gain one significant privilege -- the ability to file a new motion for modification of sentence, with a new five-year clock during which the circuit court could decide whether to reduce his sentence. *See Sanders v. State*, 105 Md. App. 247, 253 (1995) (observing that when "a sentence is found to be illegal on appeal or by the trial court directly, the result is that a new sentence must be imposed"); *Greco v. State*, 347 Md. 423, 433 (1997) (holding "that when a sentencing court grants a timely request for modification or reduction of sentence, the defendant may file another request for modification or reduction of sentence within 90 days of the date of the subsequent imposition of sentence"); *Tolson v. State*, 201 Md. App. 512, 517-18 (2011) (same). (Although *Greco* and *Tolson* address the effect of a "modification" of sentence under Rule 4-345(e), the same effect arguably would follow from a "correction" of sentence under Rule 4-345(a).)

motion, and we affirmed on appeal. *Shinard-Bey*, No. 899, Sept. Term 2006. The State asserts, therefore, that Shinard's claim is barred by the law of the case doctrine.

On the merits of the claim, the State contends that Shinard's sentence is not illegal because any discrepancy in the numbering of the counts was immaterial, and, therefore, there "was no evident mistake in the announcement of sentence." The State further asserts in the alternative that even if the numbering of the counts was material, the circuit court both acknowledged and corrected any mistake on the record while Shinard was still present.

**Analysis**

*1. Whether Shinard's Claim is Barred by the Law of the Case Doctrine*

We begin by addressing the State's contention that Shinard's claim is barred by the law of the case. The law of the case doctrine provides generally that

> [o]nce [an appellate court] has ruled upon a question properly presented on an appeal, or, if the ruling be contrary to a question that could have been raised and argued in that appeal on the then state of the record, . . . such a ruling becomes the "law of the case" and is binding on the litigants and courts alike, unless changed or modified after reargument, **and neither the questions decided nor the ones that could have been raised and decided are available to be raised in a subsequent appeal.**

*Dep't of Pub. Safety & Corr. Servs. v. Doe*, 439 Md. 201, 216-17 (2014) (emphasis added) (citations and quotations omitted). The Court of Appeals has recognized that there is tension between the law of the case doctrine and Rule 4-345(a), which permits an illegal sentence claim to be raised "at any time" and without regard to ordinary rules of

preservation.[8] *Nichols v. State*, 461 Md. 572 (2018). The Court resolved that tension by narrowing the application of the law of the case doctrine to illegal sentence claims. Thus, "the law of the case doctrine bars a trial court from considering under Maryland Rule 4-345(a) an issue as to the legality of a sentence where an appellate court has previously resolved the same issue." *Nichols*, 461 Md. at 593. It does not, however, "prohibit consideration of an issue as to the legality of a sentence under Maryland Rule 4-345(a) where a defendant could have raised, but failed to raise, the issue in a prior appeal." *Nichols*, 461 Md. at 593.

In a prior appeal in this case, Shinard raised a similar claim (based on the identical underlying facts as here), alleging a conflict between the oral pronouncement of sentence and the commitment record. Brief of Appellant, *Shinard-Bey v. State*, No. 899, Sept. Term 2006, at 2-3. That claim, however, alleged "mistake and irregularity" under Code, Courts & Judicial Proceedings Article ("CJ"), § 6-408, which applies in civil cases and authorizes a court to revise an enrolled judgment "in case of fraud, mistake, irregularity, or failure of

[8] Regarding this latter point, see *Chaney v. State*, 397 Md. 460 (2007), where the Court of Appeals observed:

> If a sentence is "illegal" within the meaning of [Rule 4-345(a)], the defendant may file a motion in the trial court to "correct" it, notwithstanding that (1) no objection was made when the sentence was imposed, (2) the defendant purported to consent to it, or (3) the sentence was not challenged in a timely-filed direct appeal.

*Id.* at 466.

an employee of the court or of the clerk's office to perform a duty required by statute or rule." Brief of Appellant, *Shinard-Bey v. State*, No. 899, Sept. Term 2006, at 2, 4-6. We, in turn, addressed Shinard's claim under the criminal procedural analog to CJ § 6-408, Maryland Rule 4-345(b).[9] *Shinard-Bey*, No. 899, Sept. Term 2006, slip op. at 1-2. Although we mentioned Rule 4-345(a) in passing in that decision, *Shinard-Bey*, slip op. at 2 (citing those parts of Rule 4-345 that apply to a court's revisory power over a sentence), Shinard did not rely upon that section of the Rule in his argument, nor did we apply it, in determining that there was neither "lack of clarity" nor "mistake" in the sentence imposed. *Id.*, slip op. at 2-3.

*Nichols*, on the other hand, appears to require identity between the prior claim and the claim presently raised before a court may decline to address the present claim under the law of the case doctrine. Although the claim raised in Case No. 899, Sept. Term 2006, and the claim raised here are based upon the same underlying facts, they raise different legal issues and clearly are not the same claim. Under *Nichols*, we are constrained to conclude that Shinard's claim is not barred by the law of the case doctrine. Accordingly, we turn to the merits of his claim.

*2. Merits of the Claim*

Shinard contends that there is a conflict between the sentencing transcript, on the one hand, and the docket entries and commitment record, on the other. Shinard further

[9] Maryland Rule 4-345(b) provides: "**Fraud, Mistake, or Irregularity.** The court has revisory power over a sentence in case of fraud, mistake, or irregularity."

contends that his sentence, as reflected in the transcript, is illegal. "The general rule is that, where there is a conflict between a sentencing transcript and either a docket entry or a commitment record, the transcript controls unless it is shown to be in error." *Juan Pablo B. v. State*, 252 Md. App. 624, 638 (2021) (citations omitted), *cert. granted*, 477 Md. 150 (2022). We, therefore, must construe the sentencing transcript when assessing the legality of Shinard's sentence. For clarity, we shall summarize in tabular form the maximum penalties for each offense set forth in the indictment, the circuit court's oral pronouncement of Shinard's sentence as reflected in the transcript, and the docket entries/amended commitment record. We shall also present Shinard's interpretation of the proceedings. (We shall omit the information concerning Court 1 because no error is alleged to that count.)

First, we set forth the offenses and maximum penalties drawn from the indictment:

| **Indictment** | | |
|---|---|---|
| **Count Number** | **Offense Charged** | **Maximum Penalty** |
| Count 5 | Assault in the first degree | Twenty-five years' imprisonment (Art. 27, § 12A-1(b)[10]) |
| Count 8 | Use of a handgun in the commission of a felony or crime of violence | Twenty years' imprisonment, five years mandatory minimum without possibility of parole (Art. 27, § 36B(d)[11]) |

[10] The penalty provision in effect at the time of Shinard's trial was Md. Code (1957, 1996 Repl. Vol.), Art. 27, § 12A-1(b). A substantially similar provision is now codified at Md. Code (2002, 2021 Repl. Vol.), Criminal Law Article, § 3-202(c).

[11] The penalty provision in effect at the time of Shinard's trial was Md. Code (1957, 1996 Repl. Vol.), Art. 27, § 36B(d). A substantially similar provision is now codified at Md. Code (2002, 2021 Repl. Vol.), Criminal Law Article, § 4-204(c).

The court's oral pronouncement of sentence may be summarized as follows:

| **Court's Pronouncement of Sentence** | | |
|---|---|---|
| **Count Number** | **Offense Charged/Convicted** | **Sentence Imposed** |
| Count 5 | Use of a handgun in the commission of a felony or crime of violence | Ten years' imprisonment, five years mandatory minimum without possibility of parole |
| Count 8 | Assault in the first degree | Ten years' imprisonment |

We note that the court, at defense counsel's prompting, switched the numbers of the counts, but the sentences for each offense were legal sentences under Art. 27, § 36B(d) (use of a handgun in the commission of a felony or crime of violence) and Art. 27, § 12A-1(b) (assault in the first degree), respectively. Then, at the conclusion of the sentencing hearing, defense counsel alerted the court to its mistake, which the court acknowledged, declaring, "Okay, I got it backwards. That was just because that was the way I had it written down here."

Although the court never expressly stated that the numbers of the counts had been switched, it appears that everyone understood that to be the case, and the court clerk entered its understanding of the proceedings in the docket (an interpretation ultimately memorialized in the amended commitment record) as follows:

| **Docket Entries/Amended Commitment Record)** | | |
|---|---|---|
| **Count Number** | **Offense Charged/Convicted** | **Sentence Imposed** |
| Count 5 | Assault in the first degree | Ten years' imprisonment |
| Count 8 | Use of a handgun in the commission of a felony or crime of violence | Ten years' imprisonment, five years mandatory minimum without possibility of parole |

Thus, the court clerk renumbered the counts so that they corresponded with the indictment, but faithfully transcribed the sentences corresponding to the two substantive crimes, as articulated by the sentencing judge.

Finally, we summarize Shinard's proposed interpretation of the proceedings:

| **Shinard's Proposed Interpretation of the Court's Pronouncement** | | |
|---|---|---|
| **Count Number** | **Offense Charged/Convicted** | **Sentence Imposed** |
| Count 5 | Assault in the first degree | Ten years' imprisonment, five years mandatory minimum without possibility of parole |
| Count 8 | Use of a handgun in the commission of a felony or crime of violence | Ten years' imprisonment |

When we consider the entire context of the contested statements by the sentencing judge, several observations emerge: *First*, the orally pronounced sentences for use of a handgun in the commission of a felony or crime of violence and first-degree assault are legal sentences for those respective offenses, but if we adopt Shinard's suggested interpretation, the orally pronounced sentences would be illegal. In other words, ten years' imprisonment, the first five without the possibility of parole, is a legal sentence for use of a handgun in the commission of a felony or crime of violence, but it is not a legal sentence for assault in the first degree. Likewise, ten years' imprisonment is a legal sentence for assault in the first degree, but it is not a legal sentence for use of a handgun in the commission of a felony or crime of violence.

*Second*, although a true conflict between the transcript, on the one hand, and the docket entries and commitment record, on the other, must be resolved in favor of the

transcript, *Juan Pablo B.*, 252 Md. App. at 638, we may construe all those sources together to resolve any claimed ambiguity in the sentence. *Dutton v. State*, 160 Md. App. 180, 193 (2004) (citing *Jackson v. State*, 68 Md. App. 679, 687-88 (1986)). When we do so here, it is clear that, as in *Dutton*, 160 Md. App. at 193, "if there was any potential ambiguity in the sentence as announced orally, such ambiguity was removed by the contemporaneous [docket entries] that stated more explicitly" that the sentence for Count 5, assault in the first degree, was ten years' imprisonment, consecutive to Count 1, and that the sentence for Count 8, use of a handgun in the commission of a felony or crime of violence, was ten years' imprisonment, the first five without the possibility of parole, consecutive to Count 5.[12]

We hold that there was no mistake or ambiguity in the pronouncement of sentence and that the sentence the court imposed was a legal sentence. Although in *Point's Reach Condominium Council of Unit Owners v. Point Homeowners Association*, 213 Md. App. 222 (2013), we were speaking in the different context of the interpretation of contracts and restrictive covenants, what we said there is equally apt here: "a writing (or related writings) is ambiguous when it **reasonably** can be read to have two different but **plausible** meanings." *Id.* at 255 (citing *Calomiris v. Woods*, 353 Md. 425, 436 (1999)) (emphasis

[12] Here, unlike in *Dutton*, the contemporaneously issued commitment record had a different error, mistakenly stating that the sentence for Count 8 was concurrent with the sentence for Count 5, but an amended commitment record was issued several months later, correcting that error and indicating that all sentences were consecutive to one another. Shinard does not claim in this appeal that there was any ambiguity in that regard.

added). Shinard's interpretation of the sentencing transcript is neither reasonable nor plausible, and thus, the transcript, understood in its proper context, is not ambiguous.

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