

Circuit Court for Baltimore City
Case No. 119070018

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1436

September Term, 2019

DAMON HALL

v.

STATE OF MARYLAND

Friedman,
Gould,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 5, 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.

Following a bench trial in the Circuit Court for Baltimore City, Damon Hall, appellant, was convicted of conspiracy to possess cocaine with intent to distribute. On appeal, he raises the three questions for our review:

1. Did the circuit court violate [his] right to a jury trial because it failed to conduct any waiver inquiry?
2. Did the circuit court's failure to conduct a waiver inquiry violate MD Rule 4-246?
3. Was the evidence insufficient to sustain the conspiracy conviction and/or was the sentence for conspiracy illegal?

Because Mr. Hall's conviction and sentence were illegal, we shall reverse the judgment of the circuit court.¹

Mr. Hall was indicted for multiple offenses, including conspiracy to possess heroin with intent to distribute (count 1); possession of cocaine with intent to distribute (count 2); possession of buprenorphine with intent to distribute (count 3); possession of marijuana with intent to distribute (count 4); possession of cocaine (count 5); possession of buprenorphine (count 6); possession of oxycodone (count 7); possession of drug paraphernalia (count 8); and two counts of conspiracy to possess a firearm in relation to a drug trafficking crime (counts 9 and 10). He was tried at a bench trial along with four co-defendants. At trial, the State presented evidence that two firearms and various controlled substances were found in a house where Mr. Hall and his co-defendants were present.

Following closing arguments, the trial court rendered its verdict as follows:

¹ Because we conclude that Mr. Hall's conviction and sentence were illegal, we do not address his claims with respect to the court's jury trial waiver inquiry.

But this is what the Court finds with regards to the items that were found throughout the house. Plenty of cocaine was found throughout the house that would lead a reasonable person in the Court's position to infer that these gentlemen were in agreement to sell that cocaine. *So as to . . . conspiracy to possess with intent to distribute cocaine the court finds Mr. Hall guilty of the same, Mr. Biggs guilty of the same, Mr. Horton guilty of the same, and Mr. Benner guilty of the same. The Court will give them the benefit of the doubt for the remaining counts.*

Thereafter, the court sentenced appellant to three years' incarceration. The commitment record indicates that the sentence was imposed on count 1 for the offense of conspiracy to possess cocaine with intent to distribute.

Mr. Hall contends, and the State concedes, that his conviction and sentence were illegal. We agree. “[I]t is elementary that a defendant may not be found guilty of a crime of which he was not charged in the indictment.” *Johnson v. State*, 427 Md. 356, 375 (2012) (quoting *Turner v. State*, 242 Md. 408, 414 (1966)). Here, the court convicted Mr. Hall of conspiracy to possess cocaine with intent to distribute based on “the amount of cocaine that was found throughout the house.” However, unlike his co-defendants, Mr. Hall was not charged with that offense and it was not a lesser included offense of any of the other crimes charged in the indictment. Moreover, although Mr. Hall was charged in count 1 of the indictment with conspiracy to possess *heroin* with intent to distribute, where “the State has alleged the possession of a particular controlled dangerous substance, proof of that substance is needed to convict.” *See State v. Simpson*, 318 Md. 194, 198 (1989) (further noting that “the identification of the particular controlled dangerous substance in a given offense . . . must be treated as an element of the offense.”). Consequently, Mr. Hall's conviction and sentence must be reversed. *Johnson*, 427 Md. at 362, 379 (holding

that when a sentence is imposed for a crime that is not charged in the indictment, both the conviction and sentence are illegal and must be vacated).

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY REVERSED.
COSTS TO BE PAID BY MAYOR AND
CITY COUNCIL OF BALTIMORE.**