

Circuit Court for Prince George's County
Case No. CT020056X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1504

September Term, 2019

JASON GREGORY MITCHELL

v.

STATE OF MARYLAND

Meredith,
Kehoe,
Beachley,

JJ.

Opinion by Kehoe, J.

Filed: November 6, 2020

*Meredith, Timothy E., J., now retired, participated in the hearing of this case while an active member of this Court. After being recalled pursuant to the Constitution, Article IV, Section 3A, he participated in the decision and the preparation of this opinion.

*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. *See* Md. Rule 1-104.

— Unreported Opinion —

This is an appeal from a judgment of the Circuit Court for Prince George’s County, the Honorable C. Philip Nichols, presiding, which denied Jason Gregory Mitchell’s motions to correct what he asserts are illegal sentences. Mitchell presents one issue on appeal, which we have reworded slightly:

Did the circuit court err in denying his motions to correct illegal sentences, based upon the absence of the sentencing transcript and what was indicated in his commitment records?

We will affirm the judgment of the circuit court.

In late 2001, Mitchell was arrested for a string of violent armed robberies and related crimes. He was charged in Circuit Court for Prince George’s County Case Nos. CT020836X, CT020056X, and CT020059X (hereinafter “-836X,” “-056X,” and “-059X,” respectively). The charges in -836X related to the attempted armed robbery of Roberta Powell, those in -056X to the attempted murder of Mersha Woldeyes, and those in -059X to the murder of Prince Korona. Mitchell entered into a plea agreement with the State in which he agreed to enter guilty pleas in each case and that the parties were permitted to present evidence and argument as to sentencing.

On September 12, 2002, Mitchell pled guilty to these charges. Judge Nichols was the presiding judge. On November 8, 2002, Judge Nichols sentenced Mitchell. The docket entries for the sentencing proceeding indicate that the following sentences were imposed:

-059X: life for first-degree felony murder, and a concurrent ten years on the use of a handgun count.

-056X: life for attempted first-degree murder to be served concurrently with his sentences in -059X, twenty years for the use of a handgun to be served consecutively to the life sentence, and a sentence of ten years for attempted armed robbery to be served concurrently with the sentences for attempted murder and use of a handgun.

-836X: twenty years for attempted armed robbery, consecutive to the aforementioned sentences, and a concurrent ten years for the use of a handgun count.¹

Copies of the docket entries were initialed and dated by Judge Nichols on the day of sentencing. But when the clerk's office prepared the commitment record, discrepancies crept into the process.

The commitment record for case no. -059X (the first-degree murder conviction) stated that Mitchell was sentenced to a term of imprisonment for a term of ninety-nine years. The commitment record for case no. -056X (attempted first-degree murder) also stated that the sentence was for ninety-nine years to be served concurrently with the sentence in -059X. However, both documents also stated that the time to be served by Mitchell on the first-degree murder and attempted first-degree murder charges was "Life."

Mitchell filed a motion to correct illegal sentences, arguing that the ninety-nine year sentences were illegal. Judge Nichols presided at the hearing on the motion. The parties agreed that there was no transcript of the sentencing hearing and that none would be

¹ At the time the offense was committed, the maximum sentence for armed robbery was fifteen years. The circuit court granted a motion to correct that sentence in a separate hearing.

available because the court reporter’s records had been destroyed in a flood. At the conclusion of the hearing, Judge Nichols determined that the relevant sentences reflected in the docket entries were correct and that the sentences shown on the commitment record were not. He stated:

I think that a scrivener’s error occurred after the Court initialed the docket entry, so to suggest . . . [that] the sentence[s] should be corrected is just probably not appropriate. . . . I think that the docket entries that, particularly the sheet that I initialed which, in fact, imposed a [lesser]² sentence are, in fact, the accurate docket entries.

I understand that there was a flood, that as a result of the flood the transcript^[3] of the [sentencing] hearing . . . was lost, but just because the shoe is lost and the horse is lost, the battle is not lost in this instance because there’s more than one document and the document that I signed is, in fact, correct.

The court then ordered that the commitment records be amended “to reflect the docket entries[.]”

Analysis

Mitchell contends that the circuit court erred when it ordered the commitment record to be corrected. He asserts that there is “a discrepancy between the commitment record and what was discussed during the plea hearing.” Because the transcript of the sentencing proceeding is unavailable, he posits that it is impossible to ascertain what sentences were

² The transcript reads “left.”

³ The State asserts that the sentencing hearing was never transcribed in the first place. What was destroyed, says the State, was not a transcript but rather the court reporter’s notes from which a transcript could have been prepared. The State might well be correct, but we do not believe that the distinction makes a difference.

actually imposed by the court. Therefore, reasons Mitchell, the rule of lenity applies and its application requires the circuit court to vacate Mitchell’s ninety-nine year sentences. In response, the State argues that the docket entries were accurate and the commitment records were wrong. Therefore, says the State, the sentences were legal.

We begin with some historical context. At the time that Mitchell committed the crimes to which he pled guilty, the sentencing options for murder in the first degree were limited by statute to death, imprisonment for life without parole or imprisonment for life. *See* Md. Code, art. 27, § 412(b) (2001).⁴ In contrast, the sentence for attempted first-degree murder was imprisonment “for not more than life.” *Id.* A sentence of a term of years in lieu of a life sentence for first-degree murder was (and remains) an illegal sentence. *State v. Crawley*, 455 Md. 52, 54 (2017).

The parties also agree that an illegal sentence can be corrected at any time. Md. Rule 4-345(a). If a sentence is ambiguous, the rule of lenity requires that the sentence “must be construed to favor a milder penalty over a harsher one.” *Robinson v. Lee*, 317 Md. 371, 380 (1989).

At the heart of Mitchell’s argument is the notion that, because the transcript of the sentencing hearing was unavailable, the discrepancies between the docket entries and the

⁴ Art. 27 § 412(b) has been recodified as Crim. Law § 2-201(b)(1) which permits a sentence of life or life without the possibility of parole. The death penalty was abolished in Maryland in 2013. *See* 2013 Laws of Maryland ch. 156.

commitment records necessarily rendered the sentences for murder and attempted murder ambiguous and therefore illegal. We do not agree.

Whether a sentence is illegal is typically a question of law, and appellate courts address the issue without deference to the circuit court’s ruling. *Bailey v. State*, 464 Md. 685, 696 (2019); *Rainey v. State*, 236 Md. App. 368, 374, *cert. denied*, 460 Md. 23 (2018). However, to the extent that the question of illegality turns on issues of fact, this Court “defer[s] to the trial court’s findings of fact, and will not disturb those findings unless they are clearly erroneous.” *Id.* (citing *Kunda v. Morse*, 229 Md. App. 295, 303 (2016)).

To determine what sentence was actually imposed and whether an ambiguity exists, appellate courts review the transcript of the sentencing proceeding, the docket entries and the commitment order. *Dutton v. State*, 160 Md. App. 180, 193-94 (2004). Mitchell argues that because there is no transcript, the sentences are irredeemably ambiguous. He is not correct.

Docket entries are presumptively correct. *Rainey*, 236 Md. App. at 383; *Estime v. King*, 196 Md. App. 296, 304–05 (2010). (Maryland courts “have consistently held that docket entries are presumptively correct, and will be considered dispositive evidence . . . unless there is a conflict between the docket entries and the transcript of proceedings in a particular action.”).

We are aware that there is a transcript of the sentencing hearing is not available. That notwithstanding, the docket entries are unambiguous—they state that Mitchell was

sentenced to concurrent terms of imprisonment for life on the murder and the attempted murder convictions. At the hearing on the motions to correct the sentences, Judge Nichols found that he had initialed and dated duplicates of the docket entries on the day that he passed sentence. We have no difficulty in concluding that: (1) Judge Nichols is familiar with his own handwriting and with the recording-keeping routines that he has practiced in his long career as a circuit court judge, and (2) Judge Nichols was in the best position to conclude that he had initialed the docket entries because they reflected the sentences that he had actually imposed. To the extent that there is uncertainty as to Mitchell’s sentences, it arises solely in the commitment records and those documents are internally inconsistent.⁵

Based on this record, and even though there is no transcript, there was no error, much less clear error in Judge Nichols’ finding that the inconsistencies between the commitment records and the dockets entries were the result of a “scrivener’s error” on the part of the individual in the clerk’s office who prepared the commitment records. Indeed, based upon what was before the court, it is difficult to see how a reasonable fact-finder could have reached a different conclusion. Judge Nichols’ decision to correct the commitment records

⁵ We understand that “[t]he law does not permit speculation as to the sentencing judge’s subjective intent in order to ascertain the extent of the convicted person’s punishment.” *Dutton v. State*, 160 Md. App. 180, 190–91 (2004) (quoting *Costello v. State*, 240 Md. 164, 168 (1965)). For this reason, “the only sentences known to the law are those which appear in the public records of the courts.” *Id.* In the present case, we are not speculating. What is conclusive in our view is that the sentencing judge initialed and dated a copy of the docket entries on the day that the sentences were imposed. That Judge Nichols happened to be available to preside over the hearing on Mitchell’s motion is a coincidence.

in lieu of declaring that the sentences were illegal was appropriate. We see no basis to disturb his decision.⁶

**THE JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE'S
COUNTY IS AFFIRMED. APPELLANT
TO PAY COSTS.**

⁶ Finally, if we assume that the lack of a transcript rendered the sentences suspect and therefore problematic, we would be unable to grant Mitchell the relief that he seeks. As Mitchell observes in his brief, the purpose of the rule of lenity is to give the accused the benefit of the doubt in sentencing proceedings. It is generally invoked as a rule of statutory interpretation. *See, e.g., State v. Johnson*, 442 Md. 211, 218–19 (2015); *Oglesby v. State*, 441 Md. 673, 681 (2015).

The rule of lenity also comes into play when a court indicates that it intends to impose a sentence that is more severe than the one actually imposed. When this occurs, the defendant gets the benefit of the milder sentence. *See, e.g., Robinson v. Lee*, 317 Md. 371, 377–78 (1989) (“Judge Perrott in all probability recognized Lee as an inveterate robber and therefore imposed a lengthy sentence intending it to be consecutive to any sentence that Lee had that was outstanding, pending and unserved. But by the language used he did not say so.”).

Neither application of the rule of lenity fits into the present case. There is no dispute as to the meaning of the former Art. 27 § 412(b), so the rule has no role in the case as a method of statutory interpretation. The second application of the concept doesn’t assist Mitchell with regard to his sentence for first-degree murder because he has already received the *mildest* possible sentence that the law allowed in 2001 for that crime.

Were we to conclude that the court had actually sentenced Mitchell to ninety-nine years for attempted murder—and we do not—then we would vacate the sentence and remand the case for re-sentencing.