

Circuit Court for Baltimore City
Case No.: 121277013

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1529

September Term, 2025

KELLY FRANKLIN

v.

STATE OF MARYLAND

Zic,
Tang,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 8, 2026

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

Following a jury trial in the Circuit Court for Baltimore City, Kelly Franklin was found guilty of eight offenses: robbery and second-degree assault of victim #1 (Counts 1 and 2); robbery and second-degree assault of victim #2 (Counts 4 and 5); attempted robbery, second-degree assault, and attempted theft of victim # 3 (Counts 7, 8, and 9); and theft from a CVS store (Count 10). The court sentenced Franklin as follows:

Count 4: 15 years
Count 10: 5 years, consecutive to Count 4
Count 1: 10 years, consecutive to Counts 4 & 10, all suspended
Count 7: 10 years, consecutive to Counts 4 & 10 and concurrent with Count 1,
all suspended

The court also imposed a five-year term of probation upon release. The court merged the remaining counts for sentencing purposes. The total executed time was 20 years. On direct appeal, Franklin argued, among other things, that the sentencing court erred in failing to merge the sentence (five years) for theft from CVS (Count 10) into the sentence (fifteen years) for robbery of victim # 2 (Count 4). The State agreed that the sentences should have merged under the rule of lenity, as did this Court. *Franklin v. State*, No. 1090, September Term, 2023 (filed unreported on November 18, 2024). Accordingly, this Court remanded for re-sentencing. *Slip op.* at 17.

On August 20, 2025, the court re-sentenced Franklin as follows:

Count 4: 15 years
Count 10: (merged into Count 4)
Count 1: 5 years consecutive to Count 4
Count 7: 10 years consecutive to Counts 4 & 1, all suspended

The total executed time was 20 years, the same as the original sentence.

On appeal Franklin asserts, and the State concedes, that the new sentence is illegal because it is more severe than the original sentence. Franklin explains:

The circuit court [originally] sentenced [Franklin] to consecutive terms of 15 years on Count 4 (robbery) and 5 years on Count 10 (theft) and imposed fully suspended time on two other counts, Counts 1 (robbery) and 7 (attempted robbery). Because Count 4 charged a crime of violence but not Count 10, he was eligible for parole after seven and a half years, or half of his 15-year sentence for robbery. *See* Md. Code, Corr. Servs. Art. §7-301(c) (providing that a person who has been convicted of a violent crime is not eligible for parole until the person has served the greater of one-half of their aggregate sentence for violent crimes or one-fourth of their total aggregate sentence); Md. Code, Crim. Law Art. § 14-101(a)(9) (listing robbery as a crime of violence).^[1]

When the circuit court replaced the 5-year sentence on Count 10 with a 5-year sentence on Count 1, the effect was not simply to restore an aggregate sentence of 20 years of executed incarceration. Because Count 1 also charges a crime of violence, the modification impacted Mr. Franklin’s parole eligibility. Now, he must serve 10 years – one half of his aggregate sentence for violent crimes – before he is eligible for parole.

Both Franklin and the State agree that the Supreme Court’s decision in *State v. Thomas*, 465 Md. 288 (2019), is directly on point and mandates a remand for further resentencing because the sentence is “more severe” than originally imposed. We agree.

Md. Code, Courts & Judicial Proceedings § 12-702(b) provides:

If an appellate court remands a criminal case to a lower court in order that the lower court may pronounce the proper judgment or sentence, or conduct a new trial, and if there is a conviction following this new trial, the lower court may impose any sentence authorized by law to be imposed as punishment for the offense. However, it may not impose a sentence more severe than the sentence previously imposed for the offense unless:

- (1) The reasons for the increased sentence affirmatively appear;
- (2) The reasons are based upon additional objective information concerning identifiable conduct on the part of the defendant; and

- (3) The factual data upon which the increased sentence is based appears as part of the record.

Here, the parties agree that the re-sentencing court did not intend to impose a sentence more severe than the original sentence.

In *Thomas*, the Supreme Court held that, “[i]f following a successful appeal, a defendant in a criminal case is resented to a term of imprisonment of equal length to the original sentence but with a later parole eligibility date, the new sentence is ‘more severe’ than the original sentence for purposes of CJ § 12-702(b).” 465 Md. at 310. Thus, like in *Thomas*, this case must be remanded once again for resentencing.

**CASE REMANDED TO THE CIRCUIT
COURT FOR RESENTENCING. COSTS
TO BE PAID BY MAYOR & CITY
COUNCIL OF BALTIMORE.**