

Circuit Court for Baltimore City
Case No.: 117212012 - 13

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1593

September Term, 2021

JIVON BROWN

v.

STATE OF MARYLAND

Arthur,
Tang,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 3, 2022

*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.

Jivon Brown, appellant, was convicted by a jury in the Circuit Court for Baltimore City of voluntary manslaughter of Darryl Owens and reckless endangerment of C.B.¹ Brown did not deny that he had fired shots at Owens, but at trial maintained he had done so in self-defense and defense of others. When he fired the shots at Owens, who was outside Brown's residence, a woman standing near Owens was holding C.B., Brown's young daughter.

On direct appeal, Brown argued, among other things, that the evidence was insufficient to support the reckless endangerment conviction. This Court disagreed and affirmed the judgments. *Brown v. State*, No. 2467, September Term, 2018 (filed January 30, 2020). Thereafter, Brown filed a petition for post-conviction relief and a Rule 4-345(a) motion to correct an illegal sentence. The circuit court addressed both in a hearing held on August 10, 2021. As for the Rule 4-345(a) motion, Brown asserted that the sentences imposed for voluntary manslaughter and reckless endangerment should have merged. The circuit court disagreed, noting that the offenses involved different victims. Brown, representing himself, appeals that ruling.

Brown first asserts that the circuit court erred by denying his motion without holding a hearing. As noted, however, a hearing was in fact held where the parties argued their respective positions—defense counsel maintaining that the sentences should have merged and the State arguing merger was not required.

¹ Brown was also convicted of use of a handgun in the commission of a crime of violence and unlawful possession of a firearm. He was sentenced to consecutive terms of imprisonment, with an aggregate total of 40 years.

Brown next maintains that his sentences for voluntary manslaughter and reckless endangerment should have merged because the offenses were “inseparable” and based on “the same action.” In other words, Brown seems to assert that, because the two offenses were based on his firing multiple shots at Owens, he should not be punished separately for the reckless endangerment conviction. The offenses, however, involved distinct victims and on direct appeal this Court held that the evidence was sufficient to support the conviction for reckless endangerment of C.B. Thus, given that each offense involved a distinct victim, we agree with the circuit court that merger was not required under the required evidence test or the rule of lenity. Assuming that the court could have merged the sentences pursuant to the principle of fundamental fairness, “failure to merge a sentence based on fundamental fairness does not render the sentence illegal.” *Koushall v. State*, ___ Md. ___, No. 13, Sept. Term, 2021, slip op. at 37 (filed February 3, 2022) (2022 WL 324824).

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