

Circuit Court for Caroline County
Case No: 05-K-12-009351

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1599

September Term, 2019

ROBERT LESTER TIELLEMAN

v.

STATE OF MARYLAND

Beachley,
Gould,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 22, 2020

*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.

In 2013, a jury sitting in the Circuit Court for Caroline County found Robert Lester Tielleman, appellant, guilty of two counts of attempted kidnapping, two counts of first-degree assault, two counts of second-degree assault, two counts of reckless endangerment, use of a firearm in the commission of a felony, and illegal possession of a shotgun. The court sentenced him to a total term of 80 years' imprisonment. Following his application for review of sentence, a three-judge panel reduced his sentence to 60 years.

In 2019, Mr. Tielleman filed a motion to correct an illegal sentence in which he asserted that his sentences for kidnapping should have merged. The circuit court denied the motion. Mr. Tielleman appeals and raises three issues for this Court's review: (1) whether the failure to merge the attempted kidnapping convictions violated double jeopardy principles; (2) whether the court erred in imposing consecutive sentences for the attempted kidnapping convictions because they should have merged under the rule of lenity; and (3) whether the evidence was insufficient to support the convictions for attempted kidnapping. Because Mr. Tielleman's sentence is legal, we shall affirm the circuit court's denial of his motion to correct his sentence.

First, the record before us reflects that Mr. Tielleman was charged with and convicted of the attempted kidnapping of two 15-year old girls who were walking down the street when Mr. Tielleman approached in a van, pointed a gun at them, and demanded that they get in his vehicle. Kidnapping is prohibited by § 3-502 of the Criminal Law Article of the Md. Code, which provides that “[a] person may not, by force or fraud, carry or cause a person to be carried in or outside the State with the intent to have the person carried or concealed in or outside the State.” Because there were two victims in this case,

and the unit of prosecution is the person carried or concealed, the State charged Mr. Tielleman with two counts of attempted kidnapping – separate counts for each victim. And the jury found him guilty of both counts. Accordingly, merger of the offenses was not required under the “required evidence test” or the “rule of lenity” and hence, there was no double jeopardy violation.

Second, the court had the discretion to impose consecutive sentences for the attempted kidnapping convictions. *Kaylor v. State*, 285 Md. 66, 70 (1979) (The court has the “power to impose whatever sentence it deems fit as long as it does not offend the constitution and is within statutory limits” and this “judicial power includes the determination of whether a sentence will be consecutive or concurrent, with the same limitations.”).

Finally, a Rule 4-345(a) motion to correct an illegal sentence may not be used to challenge the sufficiency of the evidence and, therefore, whether the evidence was sufficient to support the convictions for attempted kidnapping is not properly before us. *Colvin v. State*, 450 Md. 718, 725 (2016) (“a motion to correct an illegal sentence is not an alternative method of obtaining belated appellate review of the proceedings that led to the imposition of judgment and sentence in a criminal case.” (quotation omitted)). In his reply brief, Mr. Tielleman attempts to clarify that his argument is not one of sufficiency of the evidence, but rather that the State failed to prove “all of the elements of attempted kidnapping.” That claim, however, goes to the sufficiency of the evidence.

**JUDGMENT OF THE CIRCUIT COURT
FOR CAROLINE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**