

Circuit Court for Baltimore City
Case No. 194299040, 42, 44

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1628

September Term, 2017

GREGORY STERRETTE

v.

STATE OF MARYLAND

Woodward, C.J.,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 3, 2018

*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.

Gregory Sterrette, appellant, appeals the denial, by the Circuit Court for Baltimore City, of his motion to correct illegal sentence. For the reasons that follow, we affirm.

In 1995, a jury convicted Sterrette of felony murder, armed robbery, conspiracy to commit armed robbery, use of a handgun in the commission of a crime of violence, and wearing, carrying, or transporting a handgun. The court imposed a sentence of life imprisonment on the felony murder count; a consecutive sentence of twenty years' imprisonment on the use of a handgun count; and a consecutive sentence of twenty years' imprisonment on the conspiracy to the commit armed robbery count. Sterrette's remaining convictions were merged.

In 2017, Sterrette filed a motion to correct illegal sentence, claiming that his conviction for first-degree felony murder should have merged into his conviction for use of a handgun during the commission of a crime of violence under the required evidence test. The circuit court denied his motion without a hearing.

On appeal, Sterrette claims that “the lesser included offense of felony murder should merge into the greater offense of the use of a handgun in the commission of a felony or any crime violence, and that [his] life sentence for felony murder should be vacated.” This contention is without merit. Section 4-204 of the Criminal Law Article (formerly Article 27, § 36B(d)) of the Maryland Code) provides that the penalty for the use of a handgun in the commission of a crime of violence or felony shall be “in addition to any other penalty imposed for the crime of violence or felony.” In *Whack v. State*, 288 Md. 137, 149-150 (1980), the Court of Appeals held that the legislature, in enacting this provision, clearly intended that separate and distinct sentences be imposed for the use of a handgun in the

commission of a felony and the underlying felony, even where the two offenses were part of the same incident. Consequently, there was no violation of the Double Jeopardy Clause and merger was not required.¹

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

¹ In attempting to distinguish *Whack*, appellant relies on *State v. Ferrell*, 313 Md. 291 (1988), wherein the Court of Appeals found that “the offense of armed robbery merged into the greater offense of use of a handgun in the commission of a felony or crime of violence.” *Ferrell* is distinguishable, however, because it was decided in the context of whether the Double Jeopardy Clause prohibited successive prosecutions, not multiple punishments. *Id.* at 292 (“The issue in this case is whether the defendant’s prosecution . . . is barred, under double jeopardy principles, by the defendant’s prior conviction [.]”).