

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1729

September Term, 2014

TERRENCE WYNN, JR.

v.

STATE OF MARYLAND

Krauser, C. J.,
Graeff,
Friedman,

JJ.

Opinion by Krauser, C. J.

Filed: October 9, 2015

*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.

After Terrence Wynn, Jr., appellant, was convicted by a jury in the Circuit Court for Baltimore City of robbery with a deadly weapon and related offenses and this Court thereafter affirmed those judgments of convictions, *Wynn v. State*, No. 365, Sept. Term 2007 (filed November 14, 2008), Wynn filed a motion to correct an illegal sentence. That petition was granted by the circuit court, which then resentenced Wynn, to a term of twenty years' imprisonment for armed robbery and to a consecutive term of twenty years' imprisonment for the use of a handgun in a crime of violence. Wynn then filed a second motion to correct an illegal sentence, asking the circuit court to merge his conviction for robbery with a dangerous weapon into his conviction for use of a handgun in the commission of a crime of violence. When the circuit court denied that motion, he noted this appeal. Discerning no error by the circuit court, we shall affirm.

Factual and Procedural History

On the afternoon of August 29, 2004, appellant and another man, forced their way, at gunpoint, into the home of Curtis Stokes. After robbing Stokes, his two guests, a female neighbor and her young granddaughter, of their cash and other valuables, and then forcing them into the cellar, the two men compelled Stokes to open his safe, whereupon they took the money, keys, and papers that were inside. They then locked and barricaded the cellar door, leaving their victims trapped inside the cellar. The victims ultimately managed to escape, whereupon they called "911." When the police arrived, Stokes provided them with a description of the two robbers and later identified appellant from a photo array.

After the robbery, appellant was observed by witnesses, surreptitiously carrying black trash bags into the back door of his friend's home, only two blocks away from where the robbery occurred, and, on or near the day of the robbery, he was seen in possession of a gun, jewelry, clothes, CDs, a cell phone, and a large amount of cash. A subsequent search of the home of appellant's friend, on August 31, 2004, uncovered items that Stokes identified as his, which led to appellant's arrest.

On January 17, 2007, following a five-day jury trial in the circuit court, appellant was convicted of robbery with a deadly weapon; robbery; first-degree assault; theft of property with a value over \$500; theft of property with a value less than \$500; second-degree assault; wearing, carrying or transporting a handgun; use of a handgun in the commission of a felony; false imprisonment; and reckless endangerment. On March 26, 2007, the court sentenced appellant to serve a total sentence of eighty-three years' imprisonment.

This Court subsequently affirmed appellant's judgments of convictions, and the Court of Appeals thereafter denied his petition for certiorari.

More than five years after his sentence was imposed, appellant filed, on June 18, 2012, a motion to correct an illegal sentence in the circuit court. Following a hearing, the circuit court granted appellant's motion and modified appellant's sentence, imposing, in pertinent part, twenty years for use of a handgun in a felony and a consecutive twenty years for robbery with a deadly weapon, for a cumulative sentence of forty years.

Appellant subsequently filed a second motion to correct an illegal sentence on June 13, 2014. In his motion, he requested that, for sentencing purposes, his conviction for robbery with a deadly weapon should have been merged into his conviction for use of a handgun in the commission of a felony. After the circuit court denied that motion, appellant noted this timely appeal on September 30, 2014.

Discussion

We shall first address the State’s assertion that appellant’s appeal is not properly before the Court. The State maintains that although Maryland Rule 4-345(a) provides, in pertinent part, that “[t]he court may correct an illegal sentence at any time,” appellant’s sentence was not “illegal” under that rule because the modified sentence imposed by the circuit court was expressly authorized by statute, and therefore, his appeal should be dismissed.

As this Court has previously explained, however:

[W]hen the trial court is required to merge convictions for sentencing purposes but, instead, imposes a separate sentence for each unmerged conviction, it commits reversible error. . . . [S]uch an error implicates the illegality of imposing multiple sentences in a single prosecution for the same offense. . . . [T]he result is the imposition of a sentence not permitted by law. And, . . . the alleged error relates directly to the sentence. Thus, the illegality . . . inheres in the sentence itself and may be challenged, collaterally, in a motion filed under Rule 4–345(a).

Britton v. State, 201 Md. App. 589, 598-99 (2011) (citations, quotations, ellipses, and brackets in original omitted).

Because appellant claims that the circuit court imposed an illegal sentence by failing to merge sentences that it was legally obligated to merge, his appeal arises under Maryland Rule 4-345(a). Consequently, we decline to dismiss the instant appeal, as the State demands, and shall address the merits of appellant's claim.

Appellant contends that the offense of robbery with a deadly weapon merges into the offense of use of a handgun in a felony pursuant to the required evidence test. Therefore, appellant asserts the circuit court was required to merge his convictions for these offenses for the purposes of sentencing and the court's failure to do so resulted in the imposition of an illegal sentence.

The offense of robbery with a dangerous weapon is codified in the Maryland Code (2002, 2012 Repl. Vol.) § 3-403 of the Criminal Law Article ("Crim."), which prohibits any individual from committing or attempting to commit a robbery with a dangerous weapon, where "robbery" retains its common law definition. Crim. § 3-403(a); Crim. § 3-401(e). Robbery with a dangerous weapon is a felony offense, punishable by up to twenty years of imprisonment. Crim. § 3-403(b).

On the other hand, the offense of use of a handgun in a felony or crime of violence is codified at Crim. § 4-204, which provides, in pertinent part, "A person may not use a firearm in the commission of a crime of violence, as defined in § 5-101 of the Public Safety Article, or any felony . . ." Crim. § 4-204(b). Use of a handgun in a felony is, moreover, a misdemeanor offense punishable by a prison term of not less than five, but not more than

twenty years of imprisonment, the first five years of which are to be served without the possibility of parole. Crim. § 4-204(c)(1)(i) and (ii). The statute further provides, that any sentence for the offense shall be consecutive to and “in addition to any other penalty imposed” for the underlying felony. Crim § 4-204(c)(1)(i) and (2).

It is well established that, for double jeopardy purposes, armed robbery and use of a handgun in the commission of a felony are “deemed the same offense under the required evidence test.” *State v. Ferrell*, 313 Md. 291, 297, 298-301 (1988). But, for purposes of sentencing, the imposition of separate sentences for these two offenses is not only permissible, but is, in fact, mandated by the plain language of the statute criminalizing the use of a handgun in the commission of a felony. *See* Crim. § 4-204(c); *Whack v. State*, 288 Md. 137, 148-49 (1980), *appeal dismissed and cert. denied*, 450 U.S. 990 (1981). In *Whack*, the Court, (addressing the statutory predecessors to Crim. § 3-403 and Crim. § 4-204), held that the plain language of the handgun statute required the sentencing court to impose a separate minimum sentence, consecutive to whatever penalty was imposed for the underlying felony. The Court of Appeals has explained that in some circumstances, multiple sentences may be imposed for two offenses that are deemed to be the same under the required evidence test, if the Legislature clearly indicates “an express intent to punish certain conduct more severely if particular aggravating circumstances are present[.]” *Whack* at 149 (quoting *Newton v. State*, 280 Md. 260, 274 n.4 (1977)). Crim. § 4-204, the Court has concluded, “unambiguously” demonstrates the Legislature’s intent “[to impose whatever punishment is

provided for the felony plus the punishment set forth in [Crim. § 4-204].” *Id.* at 148. And it has expressly rejected the notion that the imposition of the consecutive sentences for these two offenses is prohibited by double jeopardy. *Id.* at 149-50.

Because the circuit court was required to impose separate sentences for appellant’s convictions for armed robbery and use of a handgun in the commission of a felony, the court did not err by denying appellant’s motion to correct an illegal sentence.

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