

Circuit Court for Prince George's County
Case No: CT031656X

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1741

September Term, 2019

LEIGHTON FRANCISCO ANDERSON

v.

STATE OF MARYLAND

Nazarian,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 16, 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 2004, a jury found Leighton Francisco Anderson, appellant, guilty of first-degree assault, use of a handgun in the commission of a felony or crime of violence, and related offenses. The court sentenced Mr. Anderson to 25 years' imprisonment for first-degree assault and to a consecutively run term of 20 years for the handgun offense. (The remaining convictions merged for sentencing purposes.) On appeal, Mr. Leighton challenged the trial court's denial of his motion to suppress evidence, and this Court affirmed the judgment. *Leighton Francisco Anderson a/k/a Damien Escobar*, No. 1666, September Term, 2004 (filed November 23, 2005).

In 2016, Mr. Anderson, representing himself, filed a motion to correct an illegal sentence in which he maintained that the sentencing court erred in running the handgun sentence consecutively to the assault sentence. He claimed that, because this was his first handgun offense, the court was prohibited from running the sentence consecutively to the assault sentence. By order dated August 27, 2019, the circuit court denied the motion, finding that Mr. Anderson had failed "to cite any illegality in his sentence." Mr. Anderson appeals that ruling. We shall affirm the judgment because we agree with the circuit court that the sentence is legal.

When Mr. Anderson was sentenced in 2004, § 4-204(a) of the Criminal Law Article of the Md. Code provided:

- (a) A person may not use an antique firearm capable of being concealed on the person or any handgun in the commission of a crime of violence, as defined in §5-101 of the Public Safety Article, or any felony, whether the antique firearm or handgun is operable or inoperable at the time of the crime.

(b) (1)(i) A person who violates this section is guilty of a misdemeanor and, in addition to any other penalty imposed for the crime of violence or felony, shall be sentenced to imprisonment for not less than 5 years and not exceeding 20 years.

(ii) The court may not impose less than the minimum sentence of 5 years and, except as otherwise provided in § 4-305 of the Correctional Services Article, the person is not eligible for parole in less than 5 years.

(2) For each subsequent violation, the sentence shall be consecutive to and not concurrent with any other sentence imposed for the crime of violence or felony.^[1]

Mr. Anderson interprets the statute as prohibiting a court from running a sentence for a violation of this provision consecutive to the felony or crime of violence if the defendant has not previously been convicted of violating this statute. He cites no authority for his position, however, and we find no merit to it. Moreover, there is no indication in the record before us that the sentencing court believed that it was required to run the handgun sentence consecutive to the assault sentence. Rather, the transcript of the sentencing hearing indicates that the court imposed the maximum sentence because of the horrendous facts of the crime and the effect on the victim.

At sentencing, the State reminded the court that the female victim was a friend of Mr. Anderson’s “ex-girlfriend” and when the girlfriend broke off her relationship with him, Mr. Anderson “essentially” blamed the victim. He “laid in wait behind a bush late at night for [the victim] to come home from school.” When the victim arrived home “he shot her.” “He returned, shot her again. He returned yet again.” The prosecutor further related that Mr. Anderson shot the victim about “eight times” and finally fled the scene only when the

¹ The statute today is substantively the same as in 2004.

victim’s mother returned fire. The victim was traumatized by the incident, remained very fearful of Mr. Anderson, and had become reclusive. The State urged the court to sentence Mr. Anderson “to the full 25 years for the assault” and “to give him the full sentence” for the handgun offense “and make that consecutive.”

The victim and the victim’s mother spoke of the trauma Mr. Anderson had inflicted and the victim’s mother urged the court to “place the most severe and serious sentencing upon him[.]” The victim spoke of the terror she experienced and told the court, “I could have died.” She related that, “He came back three times, three times to kill me with a gun.” “I don’t know why he did this to me.” “[W]e were friends. I didn’t do anything to him.” She told the court that, “I’m afraid. I’m afraid. I don’t want him to get out. I’m afraid of this man.”

Defense counsel asked the court to “impose a sentence all suspended except 10 years, which is the top of the guidelines.” Counsel also urged the court “not to give any consecutive sentence in this case,” asserting that “every single conviction” in this case “comes from one act, pointing a gun and firing it” and, although “there are many different ways to say that’s a violation of the law, [] that’s all one act and he should be punished for one act.” Notably, defense counsel did not contend that the court could not impose consecutive sentences.

In sentencing Mr. Anderson, the court stated:

You nearly took the life of the victim in this case, and this was truly a first degree assault, which is the crime that the legislature enacted to replace the assault with intent [to murder] crime. And this is probably the most serious first degree assault or situation that has come before this Court.

I do believe that you do pose a threat to society by what you did here, and what you were convicted of warrants the most serious sentence that the Court can impose.

The court then imposed 25 years' imprisonment for first-degree assault. After merging the convictions for second-degree assault, reckless endangerment, and carrying a handgun, the court addressed the conviction for use of a handgun in the commission of a felony or crime of violence. The court noted that "it was a handgun and it was used repeatedly," and imposed a sentence of 20 years "to be served consecutively to the sentence for the first degree assault."

We are persuaded that the sentencing court was aware of the fact that it was not required to run the handgun offense consecutively to the assault sentence. Rather, it is obvious that the court exercised its discretion in doing so. As we stated above, the court was not prohibited from running the handgun sentence consecutively, despite the fact that this was Mr. Anderson's first violation of Crim. Law § 4-204. *See Kaylor v. State*, 285 Md. 66, 69-70 (1979) (A court's discretion in imposing sentence "includes the determination of whether a sentence will be consecutive or concurrent[.]").

In sum, the circuit court did not err in denying Mr. Anderson's motion to correct an illegal sentence because his sentence is legal.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**