Circuit Court for Baltimore City
Case No. 102011047

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1810

September Term, 2019

KEVIN VAUGHAN

v.

STATE OF MARYLAND

Nazarian,
Gould,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: December 7, 2020

In 2003, Appellant Kevin Vaughan was convicted, in the Circuit Court for Baltimore City, of first-degree felony murder, kidnapping, carjacking. and related charges. Mr. Vaughan ultimately was sentenced to a term of life imprisonment, with all but 30 years suspended, for the conviction of first-degree felony murder, a concurrent term of 18 years' imprisonment for the conviction of carjacking, and a consecutive term of 18 years' imprisonment for the conviction of kidnapping.[1]

In 2016, Mr. Vaughan filed a motion to correct an illegal sentence. The circuit court denied the motion. On appeal, this Court held that Mr. Vaughan's sentence was illegal, and we remanded the case to the circuit court with instructions that either the kidnapping sentence or the carjacking sentence be vacated. On remand, the court vacated Mr. Vaughan's sentence for carjacking. The court did not alter any other portion of Mr. Vaughan's sentence.

Mr. Vaughan now claims that the circuit court erred in vacating the carjacking sentence rather than the kidnapping sentence. For reasons to follow, we hold that the court did not err. We affirm the court's judgment.

BACKGROUND

In October of 2001, Marlin Hopkins was standing near his parked vehicle when three men grabbed him and forced him into the trunk of his vehicle. It was later determined that the men grabbed Mr. Hopkins intending to steal drugs that Mr. Hopkins purportedly had in his possession. After putting Mr. Hopkins in the vehicle's trunk, the three men got

[1] The court also imposed sentences on several other convictions. Those sentences are not at issue here.

into the vehicle's passenger seats while a fourth individual, later identified as Mr. Vaughan, got into the vehicle's driver's seat and drove away. After driving a short while, Mr. Vaughan pulled over, and the three passengers exited the vehicle. They then walked to the rear of the vehicle, opened the trunk, and shot Mr. Hopkins, killing him. The men then got back in the vehicle, and Mr. Vaughan drove away. Mr. Vaughan drove to another location, where all four individuals exited the vehicle. The vehicle was then set on fire.

Mr. Vaughan ultimately was arrested and charged. On February 26, 2003, a jury convicted Mr. Vaughan of first-degree felony murder, kidnapping, carjacking, second-degree arson, and conspiracy to commit second-degree arson. On April 11, 2003, the trial court sentenced Mr. Vaughan to a term of 40 years' imprisonment for the conviction of first-degree felony murder, a consecutive term of 18 years' imprisonment for the conviction of kidnapping, a concurrent term of 18 years' imprisonment for the conviction of carjacking, a concurrent term of ten years' imprisonment for the conviction of conspiracy to commit second-degree arson, and a concurrent term of five years' imprisonment for the conviction of second-degree arson. The court set the effective date of Mr. Vaughan's sentence at December 12, 2001.

In 2015, the State filed a Motion to Correct an Illegal Sentence, arguing that Mr. Vaughan's sentence on the conviction of first-degree felony murder was illegal because it did not include a life sentence. The circuit court agreed with the State and ultimately resentenced Mr. Vaughan to a term of life imprisonment, with all but 30 years suspended,

for the conviction of first-degree felony murder. The court did not alter Mr. Vaughan's other sentences.

In November of 2016, Mr. Vaughan filed a Motion to Correct an Illegal Sentence, arguing that his sentence was illegal because one or both of the predicate felonies, namely, the kidnapping and carjacking convictions, should have merged, for sentencing purposes, into the conviction for first-degree felony murder. The circuit court denied the motion, and Mr. Vaughan noted an appeal to this Court.

On appeal, Mr. Vaughan argued that the sentencing court erred in failing to merge his felony murder conviction with at least one of the predicate felonies - either kidnapping or carjacking. He also argued that the kidnapping sentence, and not the carjacking sentence, should be merged because the jury did not specify which felony was the predicate felony and because the kidnapping sentence, which was imposed consecutive to the felony murder sentence, carried the greater imposed sentence.

In an unreported opinion, this Court agreed that Mr. Vaughan's sentence was illegal and that one of the underlying convictions should have been merged for sentencing purposes into the conviction for felony murder. *Vaughan v. State*, No. 1844, September Term 2017, 2019 WL 290216 (Md. Ct. of Spec. App. Jan. 4, 2019). We did not agree, however, that the kidnapping conviction necessarily had to be merged. *Id.* We explained:

> The jury did not indicate whether armed carjacking or kidnapping formed the basis for the felony murder conviction. Without a doubt, one of these sentences must be vacated. Significantly, the maximum penalties for kidnapping and carjacking are the same - thirty years' incarceration. Section 3-502(b); §3-405(d). [Mr. Vaughan] is wrong in his assertion that because the circuit court ran the kidnapping sentence consecutive to the felony

> murder sentence, the kidnapping is therefore the greater sentence and hence, must be merged as a matter of law.
>
> At [Mr. Vaughan's] initial sentencing, the court had the discretion to merge either the kidnapping or the carjacking. The court, erroneously, merged neither. [Mr. Vaughan] stood silent at the time, neither correcting the court nor suggesting to the court that one or all of the felonies should merge. To argue now that the court is *required* to merge the kidnapping sentence because the court chose to make that sentence consecutive to the felony murder sentence rewards [Mr. Vaughan] for his silence at the initial sentencing.

Id.

We then remanded the case to the circuit court with instructions for the court "to vacate either the armed carjacking sentence or the kidnapping sentence." *Id.* We explained that the court "had the discretion to merge either the kidnapping or the carjacking sentence and retains the discretion to determine which felony should merge." *Id.*

On September 20, 2019, the circuit court held a hearing to determine which sentence, the kidnapping or carjacking, would be vacated pursuant to this Court's order. At that hearing, Mr. Vaughan again argued that his sentence for kidnapping should be vacated because it was the "greater sentence" given that it was imposed consecutive to the sentence for felony murder. Mr. Vaughan also gave an allocution, noting that he was 17 years old at the time of his conviction and that he had made great strides at improving his life since his incarceration.

The circuit court held the matter *sub curia* until, on October 18, 2019, it issued an oral ruling vacating Mr. Vaughan's sentence for carjacking. The court explained its decision as follows:

I heard from both the State and the Defense, and I've read both of the memorandums in this matter. The facts of this case are as follows. [Mr. Vaughan] was a member of a group of young men who stole Marlin Hopkins' vehicle and then murdered him. [Mr. Vaughan], who was 17 years old at the time of this crime, got into the driver's seat of Mr. Hopkins' vehicle. Other people put Mr. Hopkins into the trunk and shot him. [Mr. Vaughan] drove off in the victim's car along with the other men, later setting the vehicle on fire. Firefighters found the car engulfed in flames. After the Baltimore City Fire Department extinguished the fire, they found Mr. Hopkins in the trunk.

The Defense in this case relies on *State v. Johnson*, 442 Md. 211 [2015], in that the State, I mean the Defense is arguing that the rule of lenity should apply or should – let me see. Well, that the rule of lenity should be persuasive, I will say to the Court, in vacating the kidnapping conviction as opposed to the carjacking conviction.

In *Johnson*, that was also a felony murder case with two predicate felonies, and neither one was merged. The Defense argued that the rule of lenity should require both felonies to merge. The Court, of course, applying the required evidence test, said that only one would merge and that for, because there was nothing from the jury as to which predicate should merge, that the greater sentence, given the benefit of the doubt to the Defense, the greater sentence, in which in [that] case was the kidnapping versus robbery, robbery being 15 years, kidnapping being 30 years, is the one that should merge. In [Mr. Vaughan's] case, both of the predicate offenses are both 30 years, so one is no greater than the other as far as what the sentence would be.

The Defense relies on [the] rule of lenity to persuade the Court to vacate the kidnapping charge. The rule of lenity is simply an aid for dealing with ambiguity in a criminal statute. A tool of last resort is applied only when a court is confronted with an otherwise unsolvable ambiguity in a criminal statute. That is not what we have here in this case. There's no ambiguity of any statutes.

The Defense also argues that if we apply the required evidence test that the greater sentence in this case is the sentence of the kidnapping because … that was the sentence that was posed consecutive, that made that the greater sentence.

The Court of Special Appeals, in their opinion on the appeal, already put that to rest and said that [Mr. Vaughan] is wrong in his assertion that because the circuit court ran the kidnapping sentence consecutive to the felony murder

> sentence, the kidnapping is, therefore, the greater sentence and, hence, must be merged as a matter of law.
>
> In reviewing the facts of this case, I am now – it's my discretion as to the sentence in this case, and if I had heard this case based on the facts in this case, it seems to me that although we didn't have anything from the jury, the predicate offense in this case would have been the carjacking because that is what occurred first. They carjacked the car and the man was killed, but for him having the car, he wouldn't have been put in the car, so there wouldn't have been any kidnapping in this court's view.
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> I am mindful of all the accomplishments that Mr. Vaughan has done in his lifetime, but I don't think they outweigh the horrific facts of this case. And for those reasons, the Court will vacate the carjacking in this case.

DISCUSSION

Mr. Vaughan contends that the circuit court erred in choosing to vacate his carjacking sentence rather than his kidnapping sentence. He presents several arguments in support of that claim. For reasons to follow, we hold that Mr. Vaughan's arguments have no merit and that, as a result, the court did not err.

Before discussing the merits, we set forth the general standard of review. "Generally, we review sentences only to determine whether the sentence is within statutory limitations, whether the sentencing judge was motivated by ill-will, prejudice, or other impermissible considerations, whether the sentence constitutes cruel and unusual punishment in violation of the Eight Amendment, and whether the sentence violates any other constitutional provisions." *Lopez v. State*, 458 Md. 164, 179 (2018) (citations and quotations omitted). "A trial court may exercise wide discretion in fashioning a defendant's sentence." *Sharp v. State*, 446 Md. 669, 685 (2016) (citations and quotations omitted). "Indeed, 'only rarely should a reviewing court interfere in the sentencing

decision at all, especially because the sentencing court is virtually always better informed of the particular circumstances.'" *Howard v. State*, 232 Md. App. 125, 175 (2017) (citing *Thomas v. State*, 333 Md. 84, 97 (1993)). "Thus, generally, this Court reviews for abuse of discretion a trial court's decision as to a defendant's sentence." *Sharp*, 446 Md. at 685. "[A]n abuse of discretion occurs when the court acts without reference to any guiding rules or principles, where no reasonable person would take the view adopted by the court, or where the ruling is clearly against the logic and effect of facts and inferences before the court." *Brown v. State*, 470 Md. 503, 553 (2020) (citations and quotations omitted).

A.

Mr. Vaughan first claims that the circuit court erred in finding that carjacking was the predicate offense to felony murder. He claims that that finding was clearly erroneous because "the goal of the crime was to steal Mr. Hopkins' drugs, not his car." Mr. Vaughan also claims that the court erred in finding that the carjacking happened before the kidnapping. He contends that that finding was clearly erroneous because the facts showed that Mr. Hopkins had been kidnapped prior to his car being stolen.

Mr. Vaughan's claims are based on the following comment by the circuit court:

> In reviewing the facts of this case, I am now – it's my discretion as to the sentence in this case, and if I had heard this case based on the facts in this case, it seems to me that although we didn't have anything from the jury, the predicate offense in this case would have been the carjacking because that is what occurred first. They carjacked the car and the man was killed, but for him having the car, he wouldn't have been put in the car, so there wouldn't have been any kidnapping in this court's view.

We hold that the circuit court's findings were not clearly erroneous.[2] To prove carjacking, the State needed to show that Mr. Vaughan took the victim's vehicle by force or threat of force. Md. Code, Crim. Law § 3-405(b). To prove kidnapping, the State needed to show that Mr. Vaughan, using force, carried the victim to some other place. Md. Code, Crim. Law § 3-502(a). Here, the evidence established that Mr. Vaughan's accomplices put the victim in the trunk of his vehicle and that Mr. Vaughan then got into the vehicle's driver's seat and drove away with the victim still in the trunk. From that, a reasonable inference could be drawn that the act of placing the victim in the trunk was part of the carjacking and that the "carrying away" element of kidnapping did not occur until after Mr. Vaughan drove away, *i.e.* after the carjacking had been completed. Thus, we cannot say that the court clearly erred in making that finding. *See Small v. State*, 464 Md. 68, 88 (2019) ("Findings cannot be clearly erroneous if there is any competent material evidence to support the factual findings of the trial court.") (citations and quotations omitted).

Mr. Vaughan argues that the kidnapping was completed when his accomplices grabbed the victim and "carried" him to the trunk and that, consequently, the kidnapping occurred before the carjacking. Indeed, that is one interpretation of the evidence. The circuit court interpreted the evidence differently. That difference in interpretation did not render the circuit court's findings clearly erroneous. *See State v. Brooks*, 148 Md. App.

[2] The State contends that Mr. Vaughan's claims were unpreserved because he did not object when the circuit court made the disputed findings. Although the State's argument has some merit, *see Horton v. State*, 226 Md. App. 382, 418-20 (2016), we nevertheless will exercise our discretion and address Mr. Vaughan's claims.

374, 399 (2002) ("The concern is not with the frailty or improbability of the evidentiary base, but with the bedrock non-existence of an evidentiary base.").

B.

Mr. Vaughan argues that his kidnapping sentence should have been merged because the kidnapping statute does not include an "anti-merger" provision that expressly permits a kidnapping sentence to be imposed separately from a sentence for other crimes arising out of the same course of conduct. Mr. Vaughan notes that the carjacking statute, on the other hand, does contain an anti-merger provision. He argues that, "in choosing between merging a crime where the statue does not expressly provide for separate punishment and one that does, the [circuit] court should have merged the crime with the statute that is silent on the issue." He also argues that the kidnapping sentence should have merged pursuant to the "rule of lenity" because the kidnapping statute is "ambiguous."

Mr. Vaughan is mistaken. To begin with, this Court already determined that the circuit court had the discretion to vacate either the kidnapping or the carjacking sentence. *Vaughan*, Slip Op. at 7. In so doing, we expressly recognized the fact that the carjacking statute contains an anti-merger provision while the kidnapping statute does not. *Vaughan*, Slip Op. at 6. At no point did we insinuate that vacating the kidnapping sentence was preferable given the lack of an anti-merger provision.[3] Mr. Vaughan cannot now claim

[3] Mr. Vaughan claims that "this Court noted that there is a statutory ambiguity in the kidnapping statute, because it is silent as to whether a sentence can be separate from other crimes, while the carjacking statute expressly permits it." Mr. Vaughan is incorrect. Although this Court did recognize the absence of an anti-merger provision in the kidnapping statute, we never stated, or even suggested, that the statute was ambiguous.

that the court erred in refusing to vacate the kidnapping sentence for reasons that this Court already has rejected, albeit implicitly. *See Nichols v. State*, 461 Md. 572, 593 (2018) (noting that the "law of the case" prevents relitigation of issues that an appellate court already has resolved).

In any event, the circuit court was under no obligation to vacate the kidnapping sentence simply because the relevant statute did not include an anti-merger provision. *See Latray v. State*, 221 Md. App. 544, 557 (2015) ("The absence of an anti-merger provision indicates that the Legislature did not address explicitly the topic of merger in the statutory scheme, but nothing more may be inferred from it."). Thus, the court did not err or abuse its discretion.

Finally, Mr. Vaughan's reliance on the "rule of lenity" is misplaced. "The rule of lenity is simply an aid for dealing with ambiguity in a criminal statute, a tool of last resort that is applied only where a court is confronted with an otherwise unresolvable ambiguity in a criminal statute." *Johnson v. State*, 442 Md. 211, 224 (2015). Here, there was no "unresolvable ambiguity" requiring merger; rather, as we explained in our prior opinion, merger was required because Mr. Vaughan could not be sentenced separately for felony murder and the underlying felony under the "required evidence test." *Vaughan*, Slip Op. at 6. And, because both of the underlying felonies carried the same maximum sentence, it was up to the circuit court to determine which of those felonies to merge. That one of the underlying felonies did not contain an anti-merger provision in the relevant statutory scheme did not render the statute ambiguous such that the rule of lenity was applicable.

See Latray, 221 Md. App. at 557 (rejecting the argument that "the absence of an anti-merger provision within the statutes creates implicitly an ambiguity as to multiple punishment.").

Mr. Vaughan also relies on *Abeokuto v. State*, 391 Md. 289 (2006), but that case is inapposite. There, the Court of Appeals held that the statues proscribing kidnapping and child kidnapping were ambiguous as to whether the crimes could be punished separately when a defendant violates both statutes by the same conduct. *Id.* at 358-59. The Court held that, due to that ambiguity, the defendant's conviction of kidnapping and his conviction of child kidnapping should have been merged into one sentence, where both convictions arose out of a single kidnapping. *Id.*

In the present case, we are not dealing with the interplay between the statutory crimes of kidnapping and child kidnapping arising out of the same course of conduct. Nor is there any dispute that one of the predicate felony convictions, kidnapping or carjacking, should have been merged for sentencing purposes into the felony murder conviction. The sole issue here is whether the circuit court, in following this Court's directive to vacate one of the predicate felonies, erred in choosing to vacate the kidnapping sentence rather than the carjacking sentence. *Abeokuto* is silent on that issue and is therefore not applicable here.

C.

Mr. Vaughan claims that the circuit court erred in failing to apply the principles enunciated in *State v. Johnson*, 442 Md. 211 (2015). He claims that, pursuant to *Johnson*,

the court should have vacated the kidnapping sentence because the imposed sentence - a consecutive term of 18 years' imprisonment - was greater than the concurrent 18-year-term he received for the carjacking conviction.

Mr. Vaughan is incorrect, for several reasons. First, this Court, in our prior opinion, expressly considered and rejected the argument that, because the kidnapping sentence was consecutive to the felony murder sentence, the kidnapping sentence was, under *Johnson*, the "greater" sentence and must be merged as a matter of law. *Vaughan*, Slip Op. at 6-7. Moreover, the record makes plain that the circuit court, in vacating the carjacking sentence, did consider both *Johnson* and this Court's discussion of the matter. Thus, Mr. Vaughan's claim that the court did not consider *Johnson* has no merit. That the court did not ultimately agree to vacate the kidnapping sentence does not mean that the court abused its discretion.

In any event, *Johnson* does not support Mr. Vaughan's contention that his kidnapping sentence should have been merged because it carried the greatest imposed sentence. In *Johnson*, the Court of Appeals held that, "where a defendant is convicted of felony murder and multiple predicate felonies, only one conviction for a predicate felony merges for sentencing purposes with the felony murder conviction, and, absent an unambiguous indication that the trier of fact intended otherwise, the conviction for the predicate felony with the greatest maximum sentence merges for sentencing purposes." *Johnson*, 442 Md. at 221. The Court also held that, once the felony with the greatest maximum sentence is merged, the remaining felony may be sentenced separately from, and in addition to, the sentence for felony murder. *Id.* at 222-25. That is precisely what

happened here. The only difference in this case is that the two predicate felonies carried the same maximum sentence, which is why the court was given the option of vacating either sentence, as either decision would have been correct under *Johnson*. That one of those felonies carried a greater *imposed* sentence (by virtue of being consecutive to the felony murder sentence) is immaterial, and the court did not "violate the principles of *Johnson*" by refusing to vacate that sentence.

D.

Mr. Vaughan claims that the circuit court erred in vacating his carjacking sentence because, at the time of the court's order, that sentence had been fully served. Citing *Barnes v. State*, 423 Md. 75 (2011), Mr. Vaughan asserts that "a fully served sentence cannot be the proper subject of a motion to correct illegal sentence under Rule 4-345." He also asserts that, under *Stouffer v. Pearson*, 390 Md. 36 (2005), a court "cannot merge a sentence that does not exist."

We disagree. To begin with, his 18-year sentence began on December 12, 2001, and the circuit court issued its order vacating that sentence on October 18, 2019. Thus, his sentence had not been "fully served."[4]

Nevertheless, Mr. Vaughan's claim is without merit. First, his reliance on *Barnes v. State* is misplaced. In *Barnes*, the Court of Appeals dismissed as moot the defendant's appeal of the denial of a motion to correct an illegal sentence, where the sentence at issue

[4] Mr. Vaughan suggests that, with the application of "good time credits," his sentence had been fully served when the circuit court issued its order. We need not address that claim, as it was not raised before the circuit court. Md. Rule 8-131(a). Even if the sentence had expired, however, there was no error or illegality in vacating that sentence.

had been completed almost a year prior to the filing of the motion. *Barnes*, 423 Md. at 87-88. Although the Court did suggest, albeit in dicta as part of a plurality opinion, that a court can no longer provide relief under Rule 4-345(a) once a defendant has completed his sentence, the Court did not state that a court was absolutely foreclosed from providing such relief. *Id.* at 86-88. Rather, the Court qualified its stance by adding that, "once a defendant has completed his or her sentence … a court *should* dismiss the motion as moot *unless special circumstances demand its attention*." *Id.* at 86 (emphasis added). Clearly, dismissing Mr. Vaughan's claim as moot was not an option here. Moreover, because of this Court's unambiguous order giving the court the discretion to vacate either sentence, "special circumstances" existed to justify either action.

Mr. Vaughan's reliance on *Stouffer v. Pearson* is equally misplaced. That case concerned the propriety of a sentence that was imposed consecutive to a term of parole that had yet to be revoked at the time of sentencing. *Stouffer*, 390 Md. at 57-59. The Court of Appeals held that, because parole is not a "a sentence *in esse*," the sentencing judge erred. *Id.* at 59. The Court explained that, "[i]f a parolee commits an offense and the sentencing judge imposes a new sentence before revocation of parole, the new sentence commences on the date of imposition." *Id.* None of those issues are present in the instant case.

Aside from those two cases, Mr. Vaughan fails to cite, and we could not find, any authority to support his claim.[5] Mr. Vaughan's carjacking sentence was illegal, and

[5] Mr. Vaughan, citing *Johnson*, 442 Md. at 225, argues that merging the carjacking sentence after it has been already served provides him "absolutely no benefit as a result of the merger." The "benefit" referred to in *Johnson* concerns merger of the predicate felony with the greatest maximum sentence. *Id.* Again, that is precisely what occurred here.

Maryland Rule 4-345(a) permits a court to "correct an illegal sentence *at any time*." (emphasis added). Thus, the circuit court did not err. To hold otherwise would "reward Mr. Vaughan for his silence at the initial sentencing." *Vaughan*, Slip Op. at 7.

E.

Mr. Vaughan argues that, because he was a juvenile at the time of the offense, the circuit court was required to consider his age when deciding which sentence to vacate. He maintains that the court did not consider his age. He also argues that the court was required to ensure that his sentence provided "a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." He contends that "only merger of the kidnapping count" would have afforded him such an opportunity. He cites *Carter v. State*, 461 Md. 298 (2018) in support.

Again, we disagree. In *Carter*, the Court of Appeals held that, under the Eighth Amendment to the United States Constitution, a juvenile offender may not be given a sentence that is equivalent to life without parole. *Id.* at 364. The Court explained that, "while the sentence is not required to guarantee eventual freedom, it must allow a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation, so that [the defendant] has hope for some years of life outside the prison walls." *Id* (quotations omitted). Applying those principles to the facts of that case, the Court held that the defendant's sentence of 100 years, under which the defendant would not be eligible for parole consideration for 50 years, was "tantamount to a sentence of life without parole" and thus was prohibited by the Eighth Amendment. *Id.* at 365.

Here, Mr. Vaughan presents no argument to explain how his current sentence is "tantamount to a sentence of life without parole," nor does he provide any facts to show how his current sentence fails to provide him a "meaningful opportunity to obtain release." Indeed, merger of the kidnapping count would benefit him in that it likely would provide him an *earlier* opportunity for parole. But there is no indication that his current sentence deprives him of a *meaningful* opportunity for parole, which is all that *Carter* requires.

Furthermore, Mr. Vaughan's claim that the circuit court failed to consider his age is not supported by the record. In discussing the facts of the case when issuing its ruling, the court expressly noted that Mr. Vaughan "was 17 years old at the time of this crime." The court later stated that, in exercising its "discretion as to the sentence in this case," it had reviewed "the facts of this case." From that, it is clear that the court did consider Mr. Vaughan's status as a juvenile offender in choosing to vacate the carjacking conviction. That the court did not expressly reference Mr. Vaughan's age when it ultimately vacated the carjacking sentence does not mean that the court did not consider it. *See Beales v. State*, 329 Md. 263, 273 (1993) ("[T]rial judges are not obligated to spell out in words every thought and step of logic[.]").

Mr. Vaughan suggests that, because the court did not merge the kidnapping sentence, the court necessarily failed to consider his age. That contention is wholly speculative and ignores the presumption that trial judges apply the law properly. *See State v. Chaney*, 375 Md 168, 180-81 (2003) (noting that trial judges are presumed to "know the law and apply it properly").

F.

Mr. Vaughan claims that merging the kidnapping sentence would have been "consistent with the 2016 Sentencing Court's intent" and that the circuit court abused its discretion in failing to abide by that intent. We reject Mr. Vaughan's claim. This Court already held that the court had the discretion to vacate either conviction. In exercising that discretion and vacating the carjacking sentence, the court found that Mr. Vaughan's reliance on *Johnson* was unpersuasive; that the rule of lenity of was inapplicable; that the kidnapping sentence did not need to merged simply because it was the "greater" sentence; that the carjacking occurred first; and that "all the accomplishments that Mr. Vaughan has done in his lifetime" did not "outweigh the horrific facts of this case." The court was well within its discretion in refusing to vacate the kidnapping sentence for those reasons.

G.

Finally, Mr. Vaughan argues that failing to merge the kidnapping sentence violated the principles of double jeopardy. He contends that, because "it is possible that the jury based the felony murder on the kidnapping count, failure to merge that count would result in [him] being punished twice for the same offense."

We find no merit in that argument. As the Court of Appeals explained in *Johnson*, double jeopardy principles require that only one predicate felony conviction be merged for sentencing purposes into the corresponding conviction of felony murder. *Johnson*, 442 Md. at 217-25. Any remaining felony may be sentenced separately, even when there is an

ambiguity as to which predicate felony served as the basis for the felony murder conviction. *Id.*

CONCLUSION

In sum, the circuit court did not err in choosing to vacate Mr. Vaughan's sentence for carjacking rather than his sentence for kidnapping. Accordingly, we affirm.

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