Circuit Court for Baltimore County
Case No: 03-K-03-002027

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1874

September Term, 2019

DEWAYNE COLEMAN

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: November 10, 2020

In 2004, a jury in the Circuit Court for Baltimore County found Dewayne Coleman, appellant, guilty of attempted voluntary manslaughter, first-degree assault, use of a handgun in the commission of a felony or crime of violence, and possession of a handgun. The court sentenced Mr. Coleman to 10 years' imprisonment for attempted voluntary manslaughter and to a consecutively run term of 20 years for the use of a handgun. The remaining convictions merged for sentencing purposes. This Court affirmed the judgment. *Dewayne Eric Coleman v. State*, No. 158, September Term, 2006 (filed October 12, 2007).

In 2019, Mr. Coleman, representing himself, filed a motion to correct an illegal sentence in which he asserted that both his conviction and sentence for attempted voluntary manslaughter were illegal because that offense was not included in the indictment and, therefore, the court lacked jurisdiction to "try, convict, and sentence" him for that crime. Although acknowledging that he was charged with attempted murder, he maintained that that charge did not encompass attempted voluntary manslaughter because it is "not a lesser included offense of attempted first and/or second degree murder." He asserted that "the State was required to file a new charging document charging the new offense of attempted voluntary manslaughter" and, because it had not, the conviction was "illegal and unlawful" and must be vacated. Additionally, he maintained that the handgun conviction and sentence must also be vacated because, without the conviction for attempted voluntary manslaughter, there will be "no felony or crime of violence outstanding from his trial" because "the sentencing judge merged [the first-degree assault] conviction during sentencing, which under law, operates as an acquittal."

The circuit court denied the motion, a judgment Mr. Coleman appeals. Because his conviction and sentence for attempted voluntary manslaughter are legal, we shall affirm.[1]

Count 1 of the indictment stated:

> The jurors of the State of Maryland, for the body of Baltimore County, do on their oath present that DEWAYNE ERIC COLEMAN late of Baltimore County aforesaid, on the 12th day of May, in the year of our Lord two thousand and three, at Baltimore County, aforesaid, unlawfully and of deliberately premeditated malice aforethought did attempt to kill and murder one Keith Worthington; against the peace, government and dignity of the State. (Attempted murder – Criminal Law Article – CR 2-205) 2 0910

That count, using the so called "short-form" of indictment, charged Mr. Coleman with attempted first-degree murder, attempted second-degree murder, and attempted manslaughter. *See* § 2-208(a) of the Criminal Law Article of the Md. Code ("An indictment for murder or manslaughter is sufficient if it substantially states: '(name of defendant) on (date) in (county) feloniously (willfully and with deliberately premeditated malice) killed (and murdered) (name of victim) against the peace, government, and dignity of the State.'").

In *Ross v. State*, 308 Md. 337 (1987), the Court of Appeals noted that a defendant charged with murder using the language in the short-form indictment "is clearly apprised that he is being charged with the crime of murder and that he may be convicted of murder in either degree, or manslaughter." *Id.* at 345. "That defendant is also told when and where

[1] Although not necessary to our disposition, we note that the sentencing court merely merged the conviction for first-degree assault with the conviction for attempted voluntary manslaughter for *sentencing* purposes. That merger did not result in an acquittal of first-degree assault, but simply meant that the court would not impose a separate sentence for the assault.

the homicide occurred, and the identity of the victim. He is not told whether the State will proceed upon one or another, or upon several theories concerning the particular malevolent state of mind alleged to have been present, but neither is he entitled to this information as a matter of constitutional due process." *Id.*

In *Dishman v. State*, 352 Md. 279, 289-90 (1998), the Court of Appeals again stated that an indictment under Article 27, § 616 (now codified as Crim. Law § 2-208(a)) "alleging first degree murder also *charges* second degree murder and manslaughter." *See also State v. Ward,* 284 Md. 189, 200 (1978) ("It is well settled that under an indictment pursuant to the statutory form, even though it spells out murder in the first degree, the accused may be convicted of murder in the first degree, of murder in the second degree, or of manslaughter.").

More recently, in *Nicholson v. State,* 239 Md. App. 228, 257-58 (2018), *cert. denied,* 462 Md. 576 (2019), this Court rejected the appellant's contention that the short-form indictment for murder applied only to first-degree murder and the lesser included offenses of that crime and, thereby, precluded second-degree felony murder. *Id.* at 257. Instead, we noted that, "[b]y its plain language, Crim. Law § 2-208 applies to *any* 'murder or manslaughter' charge, and Maryland appellate courts have consistently rejected attempts to narrow the range of homicide charges supported by the short-form indictment." *Id.* at 258 (citations omitted).

Finally, the fact that Count 1 of Mr. Coleman's indictment included a citation to "Criminal Law Article – CR 2-205," the statutory provision for attempted first-degree murder, does not mean that it excluded the lesser included offenses. *Id.* Moreover, as we

observed in *Bowers v. State,* 227 Md. App. 310 (2016), "[b]ecause manslaughter is an implicit, lesser included offense within murder, [typically] an 'indictment or criminal information on which [the defendant] stood trial will never even have mentioned the word manslaughter[.]'" *Id.* at 320 (quoting Charles E. Moylan, Jr., *Criminal Homicide Law* § 8.5, at 155–56 (2002)).

In sum, we hold that the circuit court did not err in denying Mr. Coleman's motion to correct an illegal sentence.

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