

Circuit Court for Prince George's County
Case No. CT201042X

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1972

September Term, 2021

DOMINIQUE ANTONIO WILLIAMS

v.

STATE OF MARYLAND

Kehoe,
Beachley,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 19, 2022

*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.

Convicted by a jury in the Circuit Court for Prince George’s County of armed robbery, robbery, first degree assault, reckless endangerment, and use of a firearm in a felony or crime of violence, Dominique Antonio Williams, appellant, presents for our review a single issue: whether the court erred in imposing separate and consecutive sentences for armed robbery and first degree assault. For the reasons that follow, we shall vacate the sentences and remand the case for resentencing.

At trial, the State called Damien Johnson, who testified that on August 14, 2020, he was “walking down the street” when Mr. Williams approached him, grabbed him by his shirt, put a gun in his face, and stated: “You know what up.” Mr. Johnson “started tussling” with Mr. Williams, who pushed Mr. Johnson back, “raised the gun,” and “fire[d] maybe two or three shots.” Mr. Johnson took his “book bag off because [Mr. Williams] kept requesting” it, and ran “to the nearest apartments.” Mr. Johnson subsequently discovered that he had been shot in his leg. Later during his testimony, Mr. Johnson confirmed that “[o]nce [Mr. Williams] shot,” Mr. Johnson “gave him the book bag.”

At sentencing, the court sentenced Mr. Williams to a term of 25 years’ imprisonment, all but eight years suspended, for the first degree assault, and a consecutive term of twenty years’ imprisonment, all but seven years suspended, for the armed robbery. The court merged the remaining offenses. Defense counsel subsequently objected “to the stacking of” the sentences, stating: “I think that under the rule of lenity, because we’re still talking about the same crime, that they should be run concurrent because it’s still the same transaction.” The court replied:

The armed robbery is the use of the gun and pointing it at the victim for the purpose of robbing him. At the point that the robbery had occurred, . . . the victim had run away and [Mr. Williams] shot him while he was fleeing from him. He didn't shoot him and then rob him, he didn't shoot him for the purpose of robbing him, he shot him because he was running away from the robbery.

So the Court does not believe that they are the same transaction, that they are two separate transactions for the purposes of sentencing [Mr. Williams] in a concurrent sentence. It was not necessary at that point, the Court finds, for [Mr. Williams] to have shot the victim to complete the robbery. The robbery had been completed.

Mr. Williams contends that because “first degree assault is a lesser included offense of robbery with a dangerous weapon,” and the “court’s denial of Mr. Williams’[s] objection to the . . . sentences was based on a clearly erroneous view of the facts,” the court “erred in imposing separate and consecutive sentences” for the offenses. The State concurs, as do we. We have stated that first degree assault is a lesser included offense of robbery with a dangerous and deadly weapon, *Morris v. State*, 192 Md. App. 1, 39-40 (2010), and “when the indictment or jury’s verdict reflects ambiguity as to whether the jury based its convictions on distinct acts, the ambiguity must be resolved in favor of the defendant.” *Id.* at 39 (citations omitted). Here, neither the indictment nor the verdict assigned a distinct act to each offense. This ambiguity must be resolved in Mr. Williams’s favor, and hence, the court erred in failing to merge the conviction of first degree assault into the conviction of armed robbery.

With respect to a remedy, Mr. Williams requests that we vacate the sentence for first degree assault. We instead conclude that the appropriate remedy is to vacate both sentences and remand for resentencing. Rule 8-604(d)(2) states that “[i]n a criminal case, if the

appellate court reverses the judgment for error in the sentence or sentencing proceeding, the Court shall remand the case for resentencing.” Also, the Court of Appeals has recognized that “[t]he majority of our sister state appellate courts . . . view sentencing as a package,” *Twigg v. State*, 447 Md. 1, 28 (2016) (citation omitted), and “after an appellate court unwraps the package and removes one or more charges from its confines, the sentencing judge, herself, is in the best position to assess the effect of the withdrawal and to redefine the package’s size and shape[.]” *Id.* (internal citation, quotations, and brackets omitted). We further note, as does the State, that the court’s merger of the conviction for use of a handgun in a felony or crime of violence appears to violate Md. Code (2002, 2021 Repl. Vol.), § 4-204(c) of the Criminal Law Article (a person convicted of using a firearm in the commission of a crime of violence or felony “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” (emphasis added)). For these reasons, we remand the case to the circuit court to address the issue of merger and for resentencing as discussed in this opinion.

SENTENCES VACATED. JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE’S COUNTY OTHERWISE AFFIRMED. CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY PRINCE GEORGE’S COUNTY.