

Circuit Court for Baltimore City
Case No. 817132018

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2003

September Term, 2017

SHAWN HOLDEN

v.

STATE OF MARYLAND

Woodward, C.J.,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 3, 2018

*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.

Shawn Holden, appellant, committed the offense of possession of a controlled dangerous substance on March 6, 2017. He was tried for that offense by a jury in the Circuit Court for Baltimore City on October 11 and 12, 2017, and was found guilty. On October 12, 2017, the court imposed a sentence of three years’ imprisonment, all but one year suspended, to be followed by three years of probation. Holden contends that his sentence is illegal because it exceeds the maximum penalty in effect at the time of his trial and his sentencing. The State agrees, as do we.

A sentence is illegal if it is “‘not a permitted one for the conviction upon which it was imposed[.]’” *Colvin v. State*, 450 Md. 718, 725 (2016) (quoting *Chaney v. State*, 397 Md. 460, 466 (2007)). Holden was charged with possession of heroin, a controlled dangerous substance, in violation of Md. Code (2002, 2012 Repl. Vol., 2016 Supp.), Criminal Law Article (“CR”), § 5-601. At the time he committed that offense, in March 2017, subsection (c)(1) of that statute provided for a penalty of imprisonment not exceeding 4 years.

CR § 5-601 was amended, effective October 1, 2017, thereby reducing the maximum penalty for a second-time offender to 18 months.¹ As we stated in *Webster v. State*, 221 Md. App. 100, 124 (2015), when the penalty for a crime has been reduced after the offense was committed, but before sentencing, “it is ‘the penalties . . . in effect at the time the trial court imposed sentence’ which control.” (quoting *Waker v. State*, 431 Md. 1,

¹ The conviction at issue was appellant’s second conviction for possession of a CDS.

11 (2013)). Accordingly, appellant’s three-year sentence is illegal as it exceeds the statutory maximum sentence in effect at the time appellant was sentenced.

**SENTENCE ON COUNT ONE VACATED;
CASE REMANDED FOR
RESENTENCING. JUDGMENT OF THE
CIRCUIT COURT FOR BALTIMORE
CITY OTHERWISE AFFIRMED. COSTS
TO BE PAID BY MAYOR AND CITY
COUNCIL OF BALTIMORE.**