

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1549

September Term, 2015

GARY BAYNOR

v.

STATE OF MARYLAND

Krauser, C.J.,
Meredith,
Nazarian,

JJ.

PER CURIAM

Filed: December 8, 2016

*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 1997, a jury sitting in the Circuit Court for Baltimore City convicted Gary Baynor, appellant, of second-degree murder, attempted second-degree murder, two counts of use of a handgun in the commission of a crime of violence or felony, and two counts of unlawful possession of a handgun. The court sentenced Baynor to a thirty-year term of imprisonment for second-degree murder, to a term of thirty years' imprisonment for attempted second-degree murder, and to a term of twenty years' imprisonment for each use of a handgun offense offenses. (The court merged the remaining offenses.) Because the sentences were ordered to run consecutive to each other, Baynor received a total sentence of 100 years of imprisonment. After this Court affirmed, *Baynor v. State*, No. 44, September Term, 1998 (filed October 6, 1998), the Court of Appeals granted Baynor's petition for a writ of certiorari and, in turn, affirmed. *Baynor v. State*, 355 Md. 726 (1999).

In 2015, Baynor filed a motion to correct an illegal sentence in which he asserted that his convictions should have merged for sentencing purposes. The circuit court rejected that claim and denied relief. Baynor raises the same argument in this appeal, that is, that the convictions for second-degree murder and attempted second-degree murder (as “the lesser included offenses”) should have merged, for sentencing purposes, with the respective convictions for use of a handgun in the commission of a crime of violence. Baynor also maintains that the imposition of separate sentences for these convictions violated the Double Jeopardy Clause. He requests, therefore, that this Court vacate his sentences for second-degree murder and attempted second-degree murder and remand with instructions for the circuit court to order the handgun sentences to be served concurrently with each other.

Baynor is not entitled to the relief he seeks because his sentences are lawful. Section 4-204 of the Criminal Law Article (formerly Article 27, §36B(d)) of the Maryland Code provides that the penalty for the use of a handgun in the commission of a crime of violence or felony shall be “in addition to any other penalty imposed for the crime of violence or felony.” In *Whack v. State*, 288 Md. 137, 149-150 (1980), the Court of Appeals held that the legislature, in enacting this provision, clearly intended that separate and distinct sentences be imposed for the use of a handgun in the commission of a felony and the underlying felony, even where the two offenses were part of the same incident. Accordingly, there was no violation of the Double Jeopardy Clause.

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