UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2119

September Term, 2015

KENNETH ADOLPHUS HINTON

v.

STATE OF MARYLAND

Woodward,
Leahy,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: March 15, 2017

*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.

Following a trial in the Circuit Court for Montgomery County, a jury convicted appellant, Kenneth Adolphus Hinton, representing himself, of theft scheme of at least $1000 but less than $10,000 and 26 counts of perjury by affidavit.[1,2] The trial court sentenced appellant to a total of 70 years in prison, after which he filed a timely notice of appeal, through counsel, presenting the following questions for our consideration:

1. Was the evidence insufficient to support Appellant's convictions?

2. Were Appellant's convictions for perjury based on both Requests and Statements filed in each case multiplicitous and did they violate Appellant's constitutional protection against double jeopardy such that one of each of the two convictions must be reversed?

3. Must Appellant's convictions for perjury merge into his convictions for theft scheme?

4. Did the sentences imposed upon Appellant totaling active incarceration of 70 years constitute cruel and unusual punishment in violation of Appellant's rights under the Eighth Amendment?

For the reasons that follow, we shall affirm the judgments of the trial court.

FACTS AND LEGAL PROCEEDINGS

Pursuant to Maryland Rule 1-325,[3] a civil litigant who wishes to file a complaint in a Maryland circuit court but who, by reason of poverty, cannot afford the filing fee, may

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[1] Appellant discharged his assigned public defender during one of numerous pretrial hearings.

[2] Prior to trial, the State dismissed, with prejudice, 14 counts of the indictment. Following the trial, the State *nolle prossed* an additional nine charges in two related indictments.

[3] Rule 1-325, at the time appellant filed his lawsuits in 2011 and 2012, stated:

request that the court waive prepaid costs.[4] The waiver request form in use in 2011 and 2012 required the requestor to set forth information regarding his or her employment and wages, monetary assets, investments, debt, and ownership of automobiles and real estate, along with his or her receipt of social security, workers' compensation, retirement, and/or disability benefits, public assistance, food stamps, settlements, and judgments. *See* Request for Waiver of Prepayment of the Filing Fee, Form DR32. The request form further required the litigant to sign the following statement: "For these reasons, I request waiver of prepayment of the filing fee. I solemnly affirm on personal knowledge and *under the penalties of perjury* that the contents of the foregoing paper are true." *Id.* (emphasis added).

> (a) **Generally.** A person unable by reason of poverty to pay any filing fee or other court costs ordinarily required to be prepaid may file a request for an order waiving the prepayment of those costs. The person shall file with the request an affidavit verifying the facts set forth in that person's pleading, notice of appeal, application for leave to appeal or request for process, and stating the grounds for entitlement to the waiver. If the person is represented by an attorney, the request and affidavit shall be accompanied by the attorney's signed certification that the claim, appeal, application, or request for process is meritorious. The court shall review the papers presented and may require the person to supplement or explain any of the matters set forth in the papers. If the court is satisfied that the person is unable by reason of poverty to pay the filing fee or other court costs ordinarily required to be prepaid and the claim, appeal, application, or request for process is not frivolous, it shall waive by order the prepayment of such costs.

The Rule was rescinded and replaced on March 2, 2015, effective July 1, 2015. The new rule governing waiver of prepaid costs by a circuit court is contained in Rule 1-325(e).

[4] According to the testimony of the special magistrate for the Circuit Court for Montgomery County, at the time appellant filed his underlying civil lawsuits in 2011 and 2012, the filing fee was $135. The current filing fee is $165.

Along with the request form, the litigant was obligated to file a separate financial statement, including detailed information regarding income from any source, expenses, and liabilities, and attesting to the following statement: "I hereby swear or affirm *under the penalties of perjury* that the above financial statement is true and correct." *See* Financial Statement, Form 220. (Emphasis added).[5] Each summons and complaint issued by the Circuit Court for Montgomery County also requires an affidavit of service upon the defendant(s), attested to by the process server (who cannot be a party to the action) under the penalties of perjury. *See* Affidavit of Service, Form CC-DR 56.

Between June 2011 and March 2012, nine lawsuits filed in the Circuit Court for Montgomery County listed appellant or his friends or relatives as the named plaintiffs. Those friends and relatives included: Carmen Ramos, appellant's ex-girlfriend; Charles Rash, listed as appellant's brother on his 2011 federal tax return but who was apparently in a federal prison in Virginia at the time the complaints were filed; Ed Johnstein, allegedly a lessee of an apartment associated with appellant;[6] and Kameron Anthony, an alias for Kameron Anthony Hinton, appellant's 12-year-old son. Affidavits of service relating to the lawsuits were allegedly signed by appellant (on one occasion styling himself K.A. Henton),

[5] The form currently in use, Request for Waiver of Prepaid Costs, Form CC-DC-089, was revised in August 2015; the information required by the previous request for waiver and financial statement forms is now consolidated into the one document.

[6] Ed Johnstein was later determined to be a likely alias for Ed Johnson, who was also a federal prison inmate.

Dawn McCormick, his former wife and Kameron Hinton's mother, Ed Johnstein, and Ed Johnson.

In each suit, a request for waiver of prepaid court costs was filed, bearing the purported signature of either appellant, Kameron Anthony, Carmon Ramos, Charles Rash, or Ed Johnstein. The circuit court granted the nine waiver requests, resulting in a waiver of prepaid court fees in the amount of $1,215.

In 2015, two circuit court officials observed, during a routine audit of fee waiver requests, that the complaints in the nine lawsuits contained "remarkably similar" language, type fonts, and margins, along with "an unusual array of charges" of deceptive practices against manufacturers of goods and providers of services. The officials also found "some irregularities in how they were being filed," including the fact that, despite listing different plaintiffs and servers of process, the complaints, fee waiver requests, financial statements, and affidavits of service all referenced the same set of names, addresses, and telephone numbers. As a result, the court officials forwarded the matter to the Montgomery County Office of the State's Attorney for a fraud investigation.

Daniel Wortman undertook an extensive investigation on behalf of the Office of the State's Attorney. Wortman first created a spreadsheet detailing the nine lawsuits and found many commonalities, including overlapping phone numbers, addresses, and names, all of which related back to appellant. With appellant as the target of his investigation, Wortman analyzed appellant's tax returns, bank accounts, vehicle ownership records, employment history, debt, and receipt of public assistance benefits. Execution of a search warrant at one

address associated with appellant yielded several computers and cell phones and numerous pages of written documents and spreadsheets.

Wortman's investigation ultimately revealed that during 2011 and 2012, notwithstanding his claims of poverty in his requests for waiver of court fees and accompanying financial statements, appellant owned at least one income-producing business and maintained other employment, earning between $5,500 and $7,500 per month. At the same time, however, appellant received unemployment insurance benefits. In addition, between July 2011 and September 2012, appellant received medical assistance and an average of $235 per month in food stamps from the Montgomery County Department of Health and Human Services, while, against regulations, receiving simultaneous benefits in the amount of $200 per month from the District of Columbia. Appellant also maintained at least five bank accounts, multiple credit cards, and ownership of at least one vehicle and real property in Texas, none of which was disclosed on his requests for waiver of fees or financial statements filed with the circuit court.

At trial, Dawn McCormick denied any involvement by her or her son, Kameron Hinton, in the Montgomery County lawsuits purportedly involving them.[7] Based on knowledge gained through her marriage to appellant, McCormick further denied the

[7] The lawsuit demanding damages in the amount of approximately $75,000 purportedly filed by Kameron Anthony was settled in 2012 for $495, with the settlement check sent to an address associated with appellant. The defense attorney did not meet the purported plaintiff at any time and stated he would not be able to identify him by sight. The State described appellant's filing of numerous lawsuits as "frivolous … [and] part of a pattern of settling these lawsuits for a trifling amount."

veracity of many of the statements made in the requests for waiver of fees in those cases. Carmen Ramos similarly denied involvement in any lawsuit filed in Montgomery County listing her as the plaintiff and the veracity of the statements in the related request for waiver of fees. Both women testified that the handwriting on the relevant court documents, regardless of the names signed, was appellant's.

The trial court denied appellant's motion for judgment of acquittal at the close of the State's case-in-chief. Appellant did not present any witnesses in his defense, and the court again denied his renewed motion for judgment of acquittal at the close of all the evidence.

DISCUSSION

I.

Appellant first argues that the evidence adduced by the State was insufficient to sustain his convictions of perjury by affidavit because the State failed to prove: (1) that the affidavits of service contained any material falsehood; (2) that any false statements in the requests for waivers and financial statements were material; and (3) that it was he who signed the requests for waiver and financial statements.[8] Recognizing that his argument to the trial court on his motion for judgment of acquittal differs from the arguments he makes on appeal, which generally precludes appellate review of the sufficiency of the evidence, appellant requests that this Court invoke its discretion to undertake a plain error analysis,

[8] Appellant makes no claim of insufficiency of the evidence with regard to the conviction of theft scheme.

pursuant to Rule 8-131(a).[9] In his view, it would "constitute a sincere deprivation of due process not to address the lack of sufficiency in this case," as a defendant represented by counsel can resort to post-conviction procedures to obtain relief for ineffective assistance of counsel but he, a *pro se* defendant at trial, would suffer the "travesty" of incarceration as a result of an unaddressed sufficiency argument.

The State, of course, agrees that appellant has failed to preserve this issue for our review, pointing out that his status as a self-represented defendant does not entitle him to a more lenient enforcement of the Maryland Rules such that we should view his argument through the lens of plain error review. In any event, the State concludes, the evidence was sufficient to sustain appellant's convictions.

As both sides acknowledge, appellant has indeed failed to preserve this issue for appellate review. When a jury is the trier of fact in a criminal matter, appellate review of the sufficiency of the evidence is available "'only when the defendant moves for judgment of acquittal at the close of all the evidence and argues precisely the ways in which the evidence is lacking.'" *Walker v. State*, 144 Md. App. 505, 545 (2002) (quoting *Anthony v. State*, 117 Md. App. 119, 126 (1997)), *rev'd on other grounds*, 373 Md. 360 (2003). "A criminal defendant who moves for judgment of acquittal is required by Md. Rule 4-324(a) to 'state with particularity all reasons why the motion should be granted[,]' and is not

[9] Rule 8-131(a) states, in pertinent part: "Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal."

entitled to appellate review of reasons stated for the first time on appeal." *Starr v. State*, 405 Md. 293, 302 (2008) (quoting *State v. Lyles*, 308 Md. 129, 135-36 (1986)). The language of the rule is mandatory. *Whiting v. State*, 160 Md. App. 285, 308 (2004), *aff'd*, 389 Md. 334 (2005). Therefore, sufficiency arguments that were not presented to the trial court but are then presented to this Court are rejected as waived. *Starr,* 405 Md. at 303.

The rule applies with equal force to *pro se* defendants. The Court of Appeals has made clear that a criminal defendant who chooses to represent himself at trial is "subject to the same rules regarding reviewability and waiver of questions not raised at trial as one who is represented by counsel." *Grandison v. State,* 341 Md. 175, 195 (1995).[10]

At the close of the State's case-in-chief, appellant moved for judgment of acquittal, as follows:

> MR. HINTON: Well, yes, Your Honor. I don't see [sic] that the defendant would like to move for the court to consider a judgment of acquittal based upon the elements. There is uncertainty regarding the aspects of the identity, actual identity, on some presentations within this court.
>
> There is elements to create reasonable doubt that there is nefarious activities that have taken place regarding defendant's identity, personal identifiers, likeness of defendant, name, addresses. The defendant further asserts that there has been investigations regarding the defendant being the victim of identity theft and fraud and it is well documented with various government agencies and within this court.

[10] Indeed, the trial court, which found appellant's request to discharge his attorney "part of a pattern of deception, misrepresentation for the purpose of delay of this trial that has been going on for almost a year," warned appellant that the charges against him were "very serious" and that he would "be held to the same standards and requirements as an attorney representing you."

Clearly, appellant's argument that he was entitled to judgment of acquittal because he had been the victim of identity theft by some unnamed party, which he alluded to numerous times during trial, bears no resemblance to the argument he makes on appeal. Therefore, he has waived this Court's consideration of the sufficiency of the evidence.

Moreover, as this Court pointed out in *Williams v. State,* "there is no instance of a Maryland appellate court's ever applying the 'plain error' exception so as to entertain a non-preserved challenge to the legal sufficiency of the State's evidence." 131 Md. App. 1, 7 (2000). We see no reason to create the first such instance here.

II.

Appellant next contends that his separate convictions for perjury by affidavit based on both the request for waiver of fees and the financial statement filed in each of the nine circuit court lawsuits are duplicative because the two documents in each case required the same statement of his financial status at the time they were signed and created "but a single financial picture" of his status attested to by "one falsity." He therefore concludes that one perjury conviction relating to each underlying lawsuit must be reversed as violative of his constitutional protection against double jeopardy. Again acknowledging that he failed to request the dismissal of any charges as duplicative at trial, thus foreclosing his right to appeal that issue, appellant renews his request for plain error review. Again, we decline his request.

Maryland's case law has made abundantly clear that our appellate courts reserve plain error review for errors that are "'compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial.'" *Savoy v. State,* 420 Md. 232, 243 (2011)

(quoting *State v. Hutchinson,* 287 Md. 198, 203 (1980)). "Because of the difficulty of demonstrating facts that are sufficiently compelling to invoke plain error review, it remains 'a rare, rare, phenomenon.'" *Steward v. State*, 218 Md. App. 550, 566-67 (2014) (quoting *Morris v. State*, 153 Md. App. 480, 507 (2003)). And, we have not hesitated to decline to review even claims of constitutional dimension that were not preserved under Rule 8-131(a). *Savoy*, 420 Md. at 241-42.

Review for plain error requires as an initial step that there be error. *Id.* at 244. Appellant is unable to pass this hurdle, and that ends our analysis.

The double jeopardy prohibitions of the United States Constitution and Maryland common law protect against successive prosecutions for the same offense and multiple punishments for the same offense. *Ingram v. State*, 179 Md. App. 485, 499 (2008). "Whether a particular course of conduct constitutes one or more violations of a single statutory offense affects an accused in three distinct, albeit related, ways: multiplicity in the indictment or information, multiple convictions for the same offense, and multiple sentences for the same offense. All three turn on the unit of prosecution of the offense and this is ordinarily determined by reference to legislative intent." *Brown v. State*, 311 Md. 426, 432 (1988) (footnote omitted).

Md. Code (2012 Repl. Vol.), §9-101 of the Criminal Law Article ("CR"), provides, in pertinent part:

> (a) *Prohibited.*-A person may not willfully and falsely make an oath or affirmation as to a material fact:
>
> (1) if the false swearing is perjury at common law;

> (2) in an affidavit required by any state, federal, or local law;
>
> (3) in an affidavit made to induce a court or officer to pass an account or claim;
>
> (4) in an affidavit required by any state, federal, or local government or governmental official with legal authority to require the issuance of an affidavit; or
>
> (5) in an affidavit or affirmation made under the Maryland Rules.

Maryland Criminal Pattern Jury Instruction 4:26.1 ("MPJI–CR"), given by the trial court virtually *verbatim* in this matter, addresses the requirements of proving perjury in an affidavit:

> MPJI-Cr 4:26.1 PERJURY – AFFIDAVIT
>
> The defendant is charged with the crime of perjury by affidavit. Perjury is deliberately making a false affidavit. In order to convict the defendant of perjury by affidavit, the State must prove:
>
> (1) that the defendant made an affidavit, which is a written statement under the penalty of perjury;
>
> (2) that the defendant represented that the facts in the statement were true;
>
> (3) that the statement contained false information;
>
> (4) that the false information was material, that is, it was capable of affecting the decision in the matter;
>
> (5) that the defendant knew or believed the information was false at the time [he] [she] made the statement;
>
> (6) that the defendant provided the false information willfully, that is, intentionally, rather than as a result of confusion or reasonable mistake; [and]
>
> [(7) that the defendant made the affidavit [with respect to a state, federal, or local law] [to induce a court or officer to pass

> an account or claim] [in an affidavit or affirmation made under the Maryland Rules] [(other)].

Relating to each of the nine underlying lawsuits filed by appellant in the circuit court using his own name or using the name of a friend or family member as the plaintiff, appellant was convicted of two violations of CR §9-101, one for committing perjury by affidavit in the filing of the request for waiver of prepaid court costs, and one for committing perjury by affidavit in the filing of the accompanying financial statement, each of which required its own attestation under the penalties of perjury. On appeal, he contends that "the Requests and Statements constituted the same statement of Appellant's financial status at the time they were signed" because each document requested the same financial information. Therefore, he concludes, although both the request and the statement were signed under separate penalties of perjury, "only one falsity was attested to and for only one reason, waivers of the fees." It thus appears that appellant is suggesting that the unit of prosecution of CR §9-101 is the underlying lawsuit in which the allegedly perjured documents were filed.

The State, citing *State v. Servello*, 835 A.2d 102, 111 (Conn. App. 2003) (holding that "the defendant did not merely reiterate the same false statement multiple times, but rather, he made three false statements involving different occurrences, and the [s]tate had to prove each of the defendant's statements false by proof specific to each statement"), maintains that the unit of prosecution is the document containing the perjured information because each false sworn statement "require[d] its own proof of falsity involving facts unique to that particular statement." We agree with the State.

"The unit of prosecution of a statutory offense is generally a question of what the legislature intended to be the act or course of conduct prohibited by the statute for purposes of a single conviction and sentence." *Brown,* 311 Md. at 434. In determining that intent, we ordinarily give the words in a statute their common and ordinary meaning. *Kaczorowski v. City of Baltimore,* 309 Md. 505, 513-16 (1987).

Section 9-101 of the Criminal Law Article states that "[a] person may not willfully and falsely make an oath or affirmation as to a material fact … in an affidavit or affirmation made under the Maryland Rules." The common-sense reading of the language of the statute makes clear that it criminalizes the act of making a false oath or affirmation in "an affidavit," that is, *each* affidavit attested to by the defendant under the penalties of perjury, each of which perpetrates a falsity upon the court and each of which must be proven by the State.

We are not persuaded by appellant's claim that the request for waiver of fees and the financial statement filed in each underlying lawsuit collectively comprised one statement. The request for waiver form asked fairly general questions, such as: how much money the applicant had; whether he was employed and how much he earned; whether he owned a car or real estate and how much was owed on each; whether anyone owed him money and how much; whether he received rental income and how much; and whether he received any type of benefits or public assistance and how much. The accompanying financial statement, containing a slightly different attestation under the penalties of perjury, required a more detailed listing of: monthly income, including federal and state taxes, FICA, and other deductions; income from property and other sources, including tax refunds

and alimony; monthly expenses, including mortgage or rent, utilities, phone, food, clothing, insurance, transportation, medical expenses, child care expenses, recreation, and "incidentals;" other assets; and liabilities.

The circuit court special magistrate explained that, in 2011 and 2012, both forms were required from a civil litigant requesting a waiver of prepaid court costs. In asking for different information, each document complemented the other, and consideration of both was required by the court before it found itself able to determine whether a waiver of court costs was appropriate. Therefore, false information contained in either document, or both, was material to the court's decision and comprised perjury by affidavit under the statute. As the State proved that appellant supplied false information in both the request for waiver and financial statement filed in each underlying lawsuit, there was no error, plain or otherwise, in appellant's separate convictions based on perjury in each document in the nine lawsuits.

III.

Next, appellant avers that his perjury convictions must merge, for sentencing purposes, into his conviction for theft scheme because the perjury convictions are "part and parcel" of the theft scheme and "to allow Appellant to suffer separate punishments for the perjuries integral to the theft scheme conviction cannot be tolerated." Apparently conceding that the crimes would not merge under the conventional required evidence test, appellant suggests that merger is nonetheless required by the rule of lenity. If that argument fails to convince us, he also urges that the principle of fundamental fairness calls for merger.

Agreeing that the crimes would not merge under the required evidence test, the State first argues that appellant has not preserved his argument that merger is appropriate under the doctrine of fundamental fairness because between *Pair v. State*, 202 Md. App. 617, 649 (2012) (which held a defendant must preserve a claim of merger by fundamental fairness) and *Latray v. State*, 221 Md. App. 544, 555 (2015) (which considered merger by fundamental fairness despite the defendant's failure to object at sentencing), "*Pair* is the better-reasoned of the two decisions." Even if considered, the State concludes, merger is not required under either the rule of lenity or the principle of fundamental fairness. Because appellant was sentenced to six consecutive prison terms of ten years each for the perjury by affidavit convictions, we will consider his merger argument, as consecutive sentences improperly imposed constitute an illegal sentence, which may be raised at any time, even in the absence of an objection at the trial court level. *See Webb v. State*, 185 Md. App. 580, 595 (2009) (citing *Slye v. State,* 42 Md. App. 520, 524 (1979)); Md. Rule 4-345(a).

In *Moore v. State*, 198 Md. App. 655 (2011), we explained the rule of lenity and the principle of fundamental fairness:

> If the principles of double jeopardy are not implicated because the offenses at issue do not merge under the required evidence test, merger may still be required under the rule of lenity or the principle of fundamental fairness. … This Court stated the rule of lenity as follows:
>
> > "Even though two offenses do not merge under the required evidence test, there are nevertheless times when the offenses will not be punished separately. Two crimes created by legislative enactment may not be punished separately if the legislature intended the offenses to be punished by one sentence. It is when we are uncertain

> whether the legislature intended one or more than one sentence that we make use of an aid to statutory interpretation known as the 'rule of lenity.' Under that rule, if we are unsure of the legislative intent in punishing offenses as a single merged crime or as distinct offenses, we, in effect, give the defendant the benefit of the doubt and hold that the crimes do merge."
>
> * * *
>
> In *Marlin v. State,* this Court set forth the principle of fundamental fairness:
>
> > Considerations of fairness and reasonableness reinforce our conclusion [to merge]. … We have … looked to whether the type of act has historically resulted in multiple punishment. The fairness of multiple punishments in a particular situation is obviously important.
> >
> > * * *
> >
> > Implicit in this reasoning is the idea that when a single act is sufficient to result in convictions for both offenses, but the victim suffered only a single harm as a result of that act, then as a matter of fundamental fairness there should be only one punishment because in a real-world sense there was only one crime.
>
> [192 Md. App. 134,] 169, 171 [(2010)] (quotations and citations omitted).

198 Md. App. at 686-87.

Pursuant to the particular facts of this matter, neither the rule of lenity nor the principle of fundamental fairness compels a finding that appellant's convictions of perjury by affidavit and theft scheme must merge for sentencing purposes.

Appellant's numerous charges of perjury by affidavit did not arise out of one act but continued unabated over the course of several months and the filing of nine lawsuits. Each incident of perjury was complete the moment appellant filed documents containing material falsities with the court and did not require that appellant receive any benefit from the filing of the perjured documents; the perjury charges would have been actionable even had the circuit court denied his requests for waiver of fees. And, eight of the 26 counts of perjury by affidavit related to false statements made on the affidavits of service in the underlying lawsuits and had no relation to the theft scheme at all.[11]

Moreover, appellant's perjuries cost the court and the taxpaying public monetarily in that they are deprived of appropriate fees. More importantly, however, appellant's lies also undermined the basis of truthfulness and fair dealing the public relies upon when statements under affidavit are made and, as the prosecutor pointed out, "flaunt the dignity of th[e] Court."

With regard to the rule of lenity, then, there is nothing to suggest that the General Assembly intended to punish perjury by affidavit and theft scheme by one sentence, and the rationale for separate punishments is aptly demonstrated above. In addition, the trial court thoroughly reasoned why appellant was not worthy of being given the benefit of the doubt in sentencing, as discussed in more detail in Section IV of this opinion, *infra*.

As for the principle of fundamental fairness, we decline to reach the question of whether preservation is required and note, instead, that it "is a defense that, by itself, rarely

[11] For reasons unexplained at appellant's trial, he was not charged with perjury by affidavit relating to the affidavit of service in one of the nine underlying lawsuits.

is successful in the context of merger." *Latray*, 221 Md. App. at 558. Indeed, as the *Latray* Court pointed out, only two cases in Maryland that have mandated merger did so based solely on principles of fundamental fairness. *Id*. We see no compelling reason to add a third. Our determination of fairness "depends on the circumstances surrounding the convictions, not solely the elements of the crimes" so that our inquiry on appeal will be "fact-intensive." *Id*. Again, as more thoroughly discussed *infra*, a consideration of the facts surrounding appellant's convictions and sentence does not command merger based on fundamental fairness.

IV.

Finally, appellant claims that the 70-year total sentence imposed by the trial court comprised cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution because the sentence is grossly disproportionate to his conviction based on theft of $1,215 of waivable fees. Acknowledging, with some degree of understatement, that he was shown to be "a vexatious litigator" who had filed frivolous lawsuits and had been banned from filing further suits in several jurisdictions, appellant nonetheless argues that his crimes do not warrant the imposition of consecutive maximum sentences for perjury and theft scheme.

The Eighth Amendment to the United States Constitution provides that

> '[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.' Similarly, Article 25 of the Maryland Declaration of Rights provides '[t]hat excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted, by the Courts of Law.' Finally, Article 16 of the

> Maryland Declaration of Rights provides '[t]hat sanguinary Laws ought to be avoided as far as is consistent with the safety of the State; and no Law to inflict cruel and unusual pains and penalties ought to be made in any case, or at any time, hereafter.'

State v. Stewart, 368 Md. 26, 31 (2002) (footnote omitted).[12]

In general, a trial court has wide discretion in fashioning a defendant's sentence. *Sharp v. State*, 446 Md. 669, 685 (2016) (quoting *McGlone v. State*, 406 Md. 545, 557 (2008)). And, 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." *Thomas v. State*, 333 Md. 84, 97 (1993). We review a trial court's sentence for abuse of its discretion, which only occurs when the sentence it imposes is "truly egregious." *Id.*

In *Thomas*, the Court of Appeals explained:

> In considering a proportionality challenge, a reviewing court must first determine whether the sentence appears to be grossly disproportionate. In so doing, the court should look to the seriousness of the conduct involved, the seriousness of any relevant past conduct as in the recidivist cases, any articulated purpose supporting the sentence, and the importance of deferring to the legislature and to the sentencing court.
>
> If these considerations do not lead to a suggestion of gross disproportionality, the review is at an end. If the sentence does appear to be grossly disproportionate, the court should engage in a more detailed … analysis. It may conduct an intra- and inter-jurisdictional analysis as a vehicle for comparison and as a source of objective standards; it must, however, remember that under principles of federalism, a state legislature may choose to impose a more severe penalty than

[12] Hinton has not made any argument that Articles 16 and 25 of the Maryland Declaration of Rights provide greater protection than afforded by the Eighth Amendment.

> other states consider appropriate. [T]o be unconstitutional, a punishment must be more than very harsh; it must be *grossly* disproportionate. This standard will not be easily met.

Id. at 95-96 (italics in original).

Appellant has not demonstrated adequately why his sentence, which is within the sentencing guidelines, is grossly disproportionate. His status as a "vexatious litigator" was merely the tip of the iceberg of reasons inducing the court to impose its lengthy sentence.[13] At sentencing, the prosecutor provided numerous details in support of his statement that "the breadth and audacity of Mr. Hinton's fraud … is staggering" and requested a lengthy sentence within the sentencing guidelines of 135 years.

After presiding over numerous pretrial hearings and the five-day trial in which appellant, representing himself, blamed everyone but himself for his actions, and reviewing the pre-sentence investigation, the court was well-equipped to mete out punishment. Because the court so thoroughly explained the reasons for its sentence, we quote from the sentencing hearing at length:

> THE COURT: Mr. Hinton, this Court has reviewed the presentence investigation and heard the arguments of the State's Attorney and heard what you have to say. The Court did sit through a trial on this case and the Court has had this case before it and has observed your behavior, the way you conduct yourself, the allegations that you have made and frankly sir, you have no credibility in front of this Court.
>
> You are a liar, you are a perjurer, you are a fraud, you will do anything you can to deceive for your own purposes. You will deceive this Court, you will deceive your friends, you

[13] The State proffered that appellant had filed almost 100 lawsuits in various state and federal jurisdictions and had been banned from bringing further actions without court approval in several of those jurisdictions.

> will deceive your family, you will deceive anyone. You have done this for many years. You did this and you were convicted in the District of Columbia. You were convicted in other jurisdictions. The fact of the matter is that I have seen your deception and fraud being used time and time again in the Court to delay these proceedings so that justice could not catch up to you.
>
> And you think you are the smartest one in the room. And maybe that's your worst flaw is that you're not [sic] and that you will use whatever straws you can grasp at, whatever, to delay, confuse, obstruct. But in the justice system, we can deal with that. The problem is when you're on the outside and when you're taking advantage of people, you're taking advantage of the community and you can't even admit that to yourself. You actually believe it. You believe some of the lies that you're telling me.
>
> If you told me the sun was shining, I would have to go outside and look to verify it. I can't believe a thing you say. As counsel has indicated, in the pursuit of obstructing this case you filed civil lawsuits against individuals who should not have been sued in the first place, you have made false allegations of not receiving documents, of being ill, of all sorts of things, whatever you can, claiming incompetency at the last moment.
>
> I cannot say it better I think than the evaluation that was written in the presentence investigation so I'm going to read that into the record because I think it says it much better than I can. Mr. Hinton is currently 51 years old and he appears before the Court for sentencing for theft scheme over $1000 and 26 counts of perjury by affidavit. Investigation revealed that this individual has had a lengthy history of contact with the criminal justice system dating back to the early 1980s.
>
> He … most certainly can be characterized as a habitual offender and con artist. The numerous offenses for which he was convicted in 2000 in the U.S. District Court in Washington, D.C. were of a highly calculated nature. Once again in regards to the instant case, Mr. Hinton has perpetrated another series of highly calculated offenses. There is no evidence that he has ever had alcohol or drug problems. So his criminal behavior is not fueled by substance abuse but rather by greed.

> Incarceration and community supervision in the past have obviously not had a long-lasting deterrent effect on this individual. Accordingly a lengthy period of incarceration appears appropriate in this case. Now the Court is aware of the guidelines and the guidelines are advisory to the Court. The Court has many cases in which individuals commit violent and horrible offenses for which they receive exceedingly large terms. The injuries that you inflicted on people in the community are not of such a similar nature but these are far more extensive throughout the community.
>
> And you continue to do it and I have no doubt that if you were released too soon that in fact you would do it again and again. With respect to Count 1 through 6, the Court is going to sentence you to 10 years' incarceration in the Maryland Department of Corrections. Each one of those counts will be consecutive to the other. Count 1 will commence and account from February 10th, 2015, the date that [you] were incarcerated on these offenses.
>
> With respect to Count 7 through and including 26, the Court will sentence you to 10 years' incarceration and those will be concurrent to Count 1. With respect to Count 27, the Court will sentence you to 10 years in the Maryland Department of Corrections and that will be consecutive to Counts 1 through 6.

Acknowledging the great deference we afford to the sentencing court, and given that court's careful consideration of appellant's extensive past criminal record dating from the 1980s, his overwhelming and continuing schemes to defraud, his utter lack of remorse for his crimes, his lack of rehabilitation from past incarceration, and the need to deter him by removing from him the possibility of committing further harm to the community, we cannot say the sentence imposed, while substantial, was grossly disproportionate. Therefore, appellant's Eighth Amendment challenge to his sentence is denied.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY

AFFIRMED; COSTS TO BE PAID BY APPELLANT.