

Circuit Court for Baltimore City
Case No: 201108001

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2035

September Term, 2019

MICHAEL LOWE

v.

STATE OF MARYLAND

Fader, C.J.,
Berger,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 2, 2020

*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.

The appellant, Michael Lowe, filed a motion to correct an illegal sentence in the Circuit Court for Baltimore City in which he asserted that his three-year sentence for a handgun violation is illegal because the trial court ordered that it run consecutively to a 30-year sentence for murder that he is serving in an unrelated case. The circuit court summarily denied the motion. Mr. Lowe appeals that ruling, asserting that the circuit court erred in denying relief and in doing so without holding a hearing. Because the sentence is legal and a hearing on the motion was not required, we shall affirm the judgment.

BACKGROUND¹

On May 23, 2001, Mr. Lowe appeared in the circuit court (case no. 201108001) and pled guilty to wearing, carrying a handgun. Disposition was deferred until October 25, 2001, at which time the docket entries reflect that the court struck or stayed the entry of the guilty plea in favor of probation before judgment (“PBJ”) and placed Mr. Lowe on a five-year period of probation. *See* Md. Code (2001), § 6-220(b)(1) of the Criminal Procedure Article (“When a defendant pleads guilty . . . or is found guilty of a crime, a court may stay the entering of judgment, defer further proceedings, and place the defendant on probation subject to reasonable conditions[.]”).

On October 24, 2002, Mr. Lowe pled guilty to second-degree murder (case no. 102092007) and was sentenced for that offense to 30 years’ imprisonment. Mr. Lowe

¹ In its brief, the State moves to dismiss the appeal because the self-represented Mr. Lowe failed to ensure that an “adequate record,” including transcripts from his sentencing proceedings, were transmitted to this Court. Although we certainly do not condone an incomplete record, because we can address the issues on appeal with the record that is before us, we shall deny the motion to dismiss the appeal.

claims that the court ordered the murder sentence to run concurrently “with any other outstanding or unserved sentence.”

It appears that, due to the murder charge, a violation of probation warrant was issued in the handgun case. The docket entries reflect that a violation of probation hearing was held on November 22, 2002, after Mr. Lowe was sentenced in the murder case. The court struck the PBJ, entered a “guilty finding,” and sentenced Mr. Lowe for the handgun offense to three years’ imprisonment, to run consecutively to the 30-year murder sentence.

Seventeen years later, Mr. Lowe, representing himself, filed a Rule 4-345(a) motion to correct an illegal sentence in which he asserted that the court erred in running the three-year sentence for the handgun offense consecutively to the murder sentence. And he requested a hearing on the petition. By order dated October 31, 2019, the circuit court summarily denied the motion, without a hearing.

DISCUSSION

We hold that the circuit court did not err in denying Mr. Lowe’s motion and in doing so without holding a hearing. First, a court may deny a motion to correct an illegal sentence without holding a hearing. *Scott v. State*, 379 Md. 170, 191 (2004) (Rule 4-345(a) “does not require a hearing in open court.”).

Second, when Mr. Lowe was sentenced in October 2002 for the murder, he was not then serving a sentence in the handgun case because the PBJ acted as a stay of any conviction. *See* Crim. Proc. § 6-220(b)(1); *Myers v. State*, 303 Md. 639, 647-48 (1985) (“[A] person who receives probation before judgment is not convicted of the crime for which he has been found guilty, unless the person violates the probation order and a court

enters a judgment on the finding of guilt.”); *Schmidt v. State*, 245 Md. App. 400, 409 (2020) (a defendant is not “convicted” of a crime until he or she is sentenced; and the entry of a probation before judgment “provide[s] the defendant an opportunity to avoid the stigma of a conviction”). In fact, had Mr. Lowe not violated any conditions of the PBJ, the court would have been obligated to discharge him from probation, without entering a judgment of conviction for the handgun offense. *See* Crim. Proc. § 6-220(g) (A discharge from probation before judgment is considered a “final disposition,” which “shall be without a judgment of conviction.”).

Mr. Lowe did not incur a judgment of conviction for the handgun offense until November 22, 2002 – after he was sentenced for the murder – when the court struck the PBJ. *See* Crim. Proc. § 6-220(f) (“On violation of a condition of probation, the court may enter judgment and proceed as if the defendant had not been placed on probation.”). At that point in time, the court was free to run the handgun sentence consecutively to any term of incarceration Mr. Lowe was then serving. *Kaylor v. State*, 285 Md. 66, 70 (1979) (“[C]onsecutive sentences are a proper exercise of the trial court’s discretion.”); *DiPietrantonio v. State*, 61 Md. App. 528, 533 (1985) (“The first judge to impose an actual sentence of confinement, the execution of which is unsuspended, creates the *status quo* to which a later sentencing judge must explicitly or implicitly relate.”). In short, the trial

judge had the authority to run the handgun sentence consecutively to the murder sentence that Mr. Lowe was then serving and, therefore, the handgun sentence is legal.

**APPELLEE’S MOTION TO DISMISS THE
APPEAL DENIED. JUDGMENT OF THE
CIRCUIT COURT FOR BALTIMORE
CITY AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**