

Circuit Court for Prince George's County
Case No. CT201108X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2195

September Term, 2022

DUANE ANDRE COOPER, II

v.

STATE OF MARYLAND

Berger,
Leahy,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: April 26, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms with Rule 1-104(a)(2)(B). Md. Rule 1-104.

A jury sitting in the Circuit Court for Prince George’s County convicted appellant Duane Andre Cooper, II, of second-degree assault, reckless endangerment involving the discharge of a firearm from a motor vehicle, illegal possession of a firearm as a prohibited person, illegal possession of ammunition, transporting a loaded handgun in a motor vehicle, and transporting a handgun on public roadways.¹

On appeal, Cooper presents four issues for our consideration:²

- I. If preserved and cognizable as a claim of sentence illegality, whether Cooper’s convictions for firearms offenses are valid under the Second Amendment.
- II. If cognizable as an issue of sentence illegality, whether Cooper’s conviction and sentence for possession of a regulated firearm after having been convicted of a disqualifying crime under Md. Code (2003, 2022 Repl.

¹ Cooper was charged with two illegal possession of a firearm offenses: possession of a regulated firearm after being convicted of a crime of violence under Md. Code (2003, 2022 Repl. Vol.), § 5-133(c) of the Public Safety Article (“PS”) and possession of a regulated firearm after having been convicted of a disqualifying crime under PS § 5-133(b). The verdict sheet asked the jury to determine whether Cooper was guilty of “possession of a firearm as a prohibited person.”

² In his brief, Cooper presented the following single question for review:

Must the sentences for illegal possession of a firearm after being convicted of a crime of violence, illegal possession of a firearm after being convicted of a disqualifying crime, possession of ammunition after being prohibited from possessing a regulated firearm, transporting a loaded handgun in a motor vehicle, and transporting a handgun on public roads be vacated or corrected?

As the State observes, this single question presented raises multiple distinct claims, which the State separated into four questions for ease of analysis. We have rephrased the questions presented by the State slightly but largely adopt the State’s presentation of the issues.

Vol.), § 5-133(b) of the Public Safety Article (“PS”) (Count 8) should be vacated, and whether his sentence for possession of a regulated firearm after being convicted of a crime of violence under PS § 5-133(c) (Count 7) should be vacated and remanded for resentencing.

- III. Whether Cooper’s conviction for transporting a handgun in a motor vehicle (Count 10) should merge with his conviction for transporting a loaded handgun in a motor vehicle (Count 9) for sentencing purposes.
- IV. Whether Cooper’s commitment record and the docket entries should be corrected to accurately reflect the sentence for reckless endangerment involving the discharge of a firearm from a motor vehicle (Count 6) as well as other changes resulting from this appeal.

As we explain herein, we shall vacate Cooper’s sentences for Count 7 (possession of a firearm after having been convicted of a crime of violence) and Count 10 (transporting a handgun in a motor vehicle). We shall further vacate Cooper’s conviction and sentence for Count 8 (possession of a firearm after having been convicted of a disqualifying crime). We shall remand for resentencing on Count 7 (possession of a firearm after having been convicted of a crime of violence), as well as for correction of the docket entries to accurately reflect the sentence that was imposed on Count 6 (reckless endangerment) and issuance of an amended commitment record that reflects the correct sentence on Count 6 (reckless endangerment) and other changes that result from this appeal. Otherwise, we shall affirm.

FACTS AND PROCEEDINGS

The facts underlying Cooper's convictions are largely irrelevant to the issues on appeal, and we will not recount them in detail here. It is sufficient to note that Cooper's charges and convictions stem from events that occurred on August 31, 2020, when Calvin Davis was shot in Beltsville, Maryland. Cooper testified on his own behalf at trial and admitted that he fired at Davis from his vehicle but maintained that he had fired at Davis in order to protect himself and his then-girlfriend. At trial, defense counsel argued that Cooper acted in self defense after Davis provoked a confrontation. With respect to the illegal possession of a firearm and illegal possession of ammunition offenses, defense counsel also argued the defense of necessity.

At the conclusion of a two-day trial on September 14 and 15, 2022, the jury returned a guilty verdict for second-degree assault, reckless endangerment involving the discharge of a firearm from a motor vehicle, and five firearms offenses: illegal possession of a firearm after being convicted of a crime of violence, illegal possession of a firearm after being convicted of a disqualifying crime, possession of ammunition after being prohibited from possessing a regulated firearm, transporting a loaded handgun in a motor vehicle, and transporting a handgun on public roads. The jury returned a not guilty verdict for first-degree assault, attempted first-degree murder, attempted second-degree murder, and use of a firearm during the commission of a crime of violence.

A sentencing hearing was held on January 27, 2023. Cooper was sentenced to an aggregate sentence of twenty years' incarceration with all but five years suspended, to be

followed by a five-year term of probation. Cooper filed a Notice of Appeal to this Court on February 15, 2023. Additional facts shall be set forth as necessitated by our consideration of the issues before us on appeal.

DISCUSSION

I.

The first issue raised by Cooper on appeal is that all five of his convictions and sentences for firearm offenses must be vacated because the charges and convictions violated his Second Amendment right to possess a firearm. Cooper contends that the firearms offenses of which he was convicted are unconstitutional under *New York Rifle & Pistol Assoc., Inc. v. Bruen*, 142 S.Ct. 2111 (2022). Cooper acknowledges, however, that: (1) this argument was not raised at any point before the circuit court, and (2) this Court’s decision in *Fooks v. State*, 255 Md. App. 75, *cert. granted*, 482 Md. 141 (2022), *stayed*, 485 Md. 52 (2023), controls. The State asserts that this unpreserved constitutional challenge is not cognizable as a claim of sentence illegality, and, therefore, it should be rejected without reaching the merits. We agree with the State that this unpreserved issue is not properly before us on appeal.

A sentence is “inherently illegal” for purposes of Rule 4-345(a) where there was no conviction warranting any sentence, *Chaney v. State*, 397 Md. 460, 466 (2007); where the sentence imposed was not permitted, *id.*; or where the sentence imposed exceeded the sentence agreed upon as part of a binding plea agreement. *Matthews v. State*, 424 Md. 503, 514 (2012). A sentence may also be “inherently illegal” where the underlying conviction

was required to have merged with the conviction for another offense for sentencing purposes. *Pair v. State*, 202 Md. App. 617, 624 (2011).

Pursuant to Maryland Rule 4-345(a), “[t]he court may correct an illegal sentence at any time.” “[T]he court’s authority to correct an illegal sentence exists even if the defendant failed to object in the trial court at the sentencing hearing or raise the issue in a direct appeal.” *Bailey v. State*, 464 Md. 685, 696 (2019). The Supreme Court has explained, however, that “[l]est Rule 4-345(a) swallow up the preservation requirement, the scope of the court’s authority under this Rule is ‘narrow.’” *Id.* at 697 (citation omitted). “[T]he illegality must inhere in the sentence itself, rather than stem from trial court error during the sentencing proceeding.” *State v. Bustillo*, 480 Md. 650, 665 (2022) (quoting *Matthews, supra*, 424 Md. at 512).

Cooper does not identify any authority that supports the proposition that an unpreserved constitutional challenge presents an issue of a sentence’s inherent illegality. To the contrary, Maryland appellate courts have repeatedly declined to address unpreserved constitutional claims that were not presented to the trial court. *See, e.g., Robinson v. State*, 404 Md. 208, 218 (2008) (explaining that the “[a]ppellant’s constitutional argument, raised for the first time on appeal, was not raised in the trial court” and was “not a jurisdictional argument” and “therefore [the court] will not consider it”); *Marshall v. State*, 213 Md. App. 532, 554 (2013) (declining to address an argument that a statute was unconstitutional when the issue was not preserved).

Indeed, the Supreme Court has explained that “[i]t is particularly important not to address a constitutional issue not raised in the trial court in light of the principle that a court will not unnecessarily decide a constitutional question.” *Robinson, supra*, 404 Md. at 218 (internal quotation and citation omitted). Because Cooper did not raise any issue regarding the constitutionality of the firearm offenses of which he was convicted before the circuit court, this issue is not properly before us on appeal, and we shall not address it.

We briefly note that Cooper expressly conceded in his brief that our prior decision in *Fooks, supra*, 255 Md. App. at 99-101, in which we held that the possession of firearms for individuals convicted of previous crimes fell outside the scope protected by the Second Amendment, “likely controls.” In *Fooks*, we held that the Supreme Court of the United States’s decision in *Bruen, supra*, “didn’t deal at all with limitations grounded in prior criminal behavior.” 255 Md. App. at 90. Cooper asserts that our decision in *Fooks* is inconsistent with *Bruen*, but we decline to address this issue when it was (1) not raised before and addressed by the circuit court, and (2) *Fooks* is currently pending before the Supreme Court of Maryland.³

II.

Cooper’s next appellate argument is that his conviction under PS § 5-133(c) must be vacated because the jury did not find that Cooper had previously been convicted of a

³ The Supreme Court granted certiorari in *Fooks v. State*, 482 Md. 141 (2022), and the case was argued before that Court on March 2, 2023. On August 15, 2023, the Supreme Court stayed the case pending a decision of the United States Supreme Court in *United States v. Rahimi*, No. 22-915, ___ U.S. ___, 143 S.Ct. 2688 (U.S. Jun. 30, 2023).

crime of violence and the parties’ joint stipulation was insufficient to establish that Cooper had been previously convicted of a crime of violence. As we shall explain, Cooper’s challenge is not cognizable as an illegal sentence claim because it does not concern the legality of Cooper’s sentence for violating PS § 5-133(c). Furthermore, as we shall explain briefly, even if Cooper’s claim was properly before us, we would find it meritless.

A. Background

Cooper was charged with two different counts under PS § 5-133, both of which pertained to his possession of a firearm after having been previously convicted of the predicate prior conviction of second-degree assault on a law enforcement officer. Cooper was charged with violating PS § 5-133(b) on the grounds that he had previously “been convicted of a disqualifying crime” and was charged with PS § 5-133(c) on the grounds that he had been “previously convicted of . . . a crime of violence.” The two charges were presented in the indictment as Counts 7 and 8 as follows:

Count 7

The grand jurors of the State of Maryland for the body of Prince George’s County on their oath do present that Duane Andre Cooper II on or about the 31st day of August, 2020, in Prince George’s County, Maryland, *did possess a regulated firearm after having been convicted of second degree assault on a law enforcement officer in Prince George’s County Case Number CT181087A: a crime of violence as defined in Public Safety Article § 5-101(c), in violation of Public Safety Article § 5-133(c) of the Annotated Code of Maryland*, against the peace, government and dignity of the [State]. **(Firearm Poss w/Felony Conviction)**

Count 8

The grand jurors of the State of Maryland for the body of Prince George’s County on their oath do present that Duane Andre Cooper II on or about the 31st day of August, 2020, in Prince George’s County, Maryland, *did knowingly possess a regulated firearm after being convicted of a disqualifying crime to wit: assault second degree against a law enforcement officer in Prince George’s County Case Number CT181087A, a violation classified as a felony in the State, in violation of Public Safety Article § 5-133(b) of the Annotated Code of Maryland, against the peace[,] government and dignity of the State. (Regulated Firearm: Illegal Possession)*

(Bold emphasis in original; italic emphasis added). The same underlying conviction -- second-degree assault on a law enforcement officer -- served as the predicate offense for each charge.

The distinction between the two illegal possession offenses and the penalty applicable to each offense is significant. Unlawful possession after a conviction for a “disqualifying crime” in violation of PS § 5-133(b) is a misdemeanor carrying a maximum penalty of five years’ incarceration, with no mandatory minimum, no limitation on parole eligibility, and no limitation on suspension of sentence. PS § 5-144. Unlawful possession after a conviction for a “crime of violence” in violation of PS § 5-133(c), however, is a felony that is subject to a statutory mandatory minimum sentence of five years’ incarceration. Moreover, the five-year mandatory minimum sentence may not be suspended, and the defendant is not eligible for parole during the five-year period.⁴ PS § 5-

⁴ PS § 5-133(c)(3) provides an exception to the mandatory five-year minimum that applies if more than five years have “elapsed since the person completed serving the

133(c)(2). The maximum sentence for a violation of PS § 5-133(c) is fifteen years’ incarceration.

Understandably, it is common practice for criminal defendants to stipulate to being prohibited from possessing a firearm in order to avoid potential prejudice from the nature of an underlying offense. The Supreme Court discussed such stipulations in *Wallace v. State*, 475 Md. 639, 662-64 (2021), explaining as follows:

A defendant charged with a crime involving the prohibited possession of a firearm can stipulate that he or she was prohibited from possessing a firearm at the time, without describing the underlying reason why the defendant was prohibited, i.e., the disqualifying crime. *Carter v. State*, 374 Md. 693, 722, 824 A.2d 123, 141 (2003). This allows the factfinder to make the factual determination of whether the defendant possessed a firearm — the charge at issue — without importing any potential prejudice from the nature of the underlying disqualifying crime. *Id.* at 722, 824 A.2d at 141. As we explained in *Carter*:

When the defendant admits or the parties stipulate to the previous-conviction element of a charge under [a previous version of the relevant statute], the trial judge should inform the jury that the defendant admits that he or she has been convicted of a crime for which he or she is prohibited from possessing a regulated firearm under the law. The judge should not describe the previous conviction with any more particularity or by using the categories of crimes under [the statute] (such as “crime of violence” or “felony”).

Id. at 722, 824 A.2d at 141 (emphasis added); *Hemming v. State*, 469 Md. 219, 259, 229 A.3d 825, 849 (2020) (“the

sentence for the most recent” predicate offense. This exception is not implicated in this case.

Carter Court promulgated a *per se* rule, under which the State is not permitted to object to such a stipulation and, if requested by a defendant, the [circuit] court must grant or accept the stipulation.”). Accordingly, upon request, “any defendant charged with the possession of a regulated firearm by a prohibited person is legally entitled to a stipulation that informs the jury that he or she is simply prohibited from possessing a regulated firearm, and disclosing no further detail regarding any prior convictions[.]” *Id.* at 259, 229 A.3d at 849.

Stipulating to the prior conviction serves the purpose [of] “avoid[ing] exposing the jury to the potential prejudicial effect that a description of the nature of that conviction might have.” *Shannon v. State*, 468 Md. 322, 333 n.6, 227 A.3d 220, 226 n.6 (2020). “A description of the conviction by its statutory category carries with it a high potential to lure jurors into a sequence of bad character reasoning, just as if the judge described the crime by its name or nature (i.e., robbery with a deadly weapon).” *Carter*, 374 Md. at 722, 824 A.2d at 141. A general description that a defendant is prohibited from possessing a firearm is just as probative as a description of the underlying conviction by which the defendant is prohibited from possessing the firearm. *Id.*, 824 A.2d at 141. “This general description also avoids any potential confusion in determining how to characterize a previous conviction that fits more than one of the categories of crimes listed under [the statute].” *Id.*, 824 A.2d at 141.

At trial in this case, consistent with the practice in *Carter, supra*, the parties agreed to stipulate that Cooper was a “prohibited person” for the purposes of PS § 5-133. Early in the trial, the State advised the trial judge that the parties would present a stipulation “that Mr. Cooper’s a prohibited person.” Before the close of the State’s case-in-chief, the prosecutor informed the court that he still needed to draft “the stipulation for the record for Mr. Cooper’s prohibited status.” Defense counsel suggested the following language for the stipulation: “the parties stipulate that on August 31, 2020, . . . Mr. Cooper was prohibited by law from possessing a firearm.”

Prior to the stipulation being entered into evidence, defense counsel moved for judgment of acquittal, asking for “judgment of acquittal as to all charges.” Defense counsel did not argue that the evidence was insufficient to convict him of either of the PS § 5-133 offenses based upon a lack of evidence of the predicate conviction. Subsequently, the typed stipulation providing that Cooper “was prohibited from owning or possessing a firearm” on the relevant date was admitted into evidence and read to the jury. During the defense case-in-chief, Cooper specifically testified that he knew he was “prohibited to possess” a gun and that he could not “[h]ave it on [his] person or own it.”⁵

Prior to the jury’s deliberations, the jury was instructed regarding the stipulation as follows:

The State and the defense have agreed that the defendant was prohibited from owning or possessing a firearm on August 31, 2020. These facts are now not in dispute and should be considered proven.

The defendant is charged with possessing a regulated firearm after being convicted of a crime that disqualified him from possessing a regulated firearm. In order to convict the defendant, the State must prove, one, the defendant knowingly possessed a regulated firearm; and, two, that the defendant was previously convicted of a crime that disqualified him from possessing a regulated firearm.

The State and the defendant agree and stipulate that the gun in this case is a regulated firearm.

⁵ Cooper argued that the weapon belonged to his girlfriend and that he only took possession of the weapon when it became necessary to use it for self-defense.

The State and the defendant agree and stipulate that the defendant was previously convicted of a crime that qualifies [(sic)] him from possessing a regulated firearm.

Notably, defense counsel did not object to the instructions.

During a discussion regarding the verdict sheet, the parties agreed that only one question should be presented to the jury regarding both Count 7 and Count 8. The following exchange occurred:

THE COURT: Why do I have only 9 [counts on the verdict sheet]?

[THE PROSECUTOR]: Oh, Judge, I think because he's prohibited by the felony. Only put one question with regards to illegal possession of a firearm, but technically it's two different counts.

THE COURT: Say that again.

[THE PROSECUTOR]: Okay. **So Mr. Cooper has violent convictions which qualifies him for possession as a felon or a person after a conviction of a crime of violence, but also for if he was disqualified for another reason;** in other words, an offense that carries a penalty of two or more years. So [we] only put one question there, but on the -- as far as his charges, it's two different counts.

[DEFENSE COUNSEL]: And that's because we stipulated to his record. **So, for the record, Your Honor, the defense agrees that if he were found guilty of B, he would be found guilty of B, be found guilty of C and vice versa because we've stipulated.**

The only time where it would become an issue is if it was at issue at trial where somebody said that they qualified for B and not C, let's say, but we're not disputing that. We've stipulated to his record for obvious reasons.

(Emphasis supplied.) The verdict sheet submitted to the jury asked: “As to Question Three, do you find the defendant, Duane A. Cooper, II, not guilty or guilty of possession of a firearm as a prohibited person?” The jury responded that it found Cooper guilty.

At sentencing, the prosecutor commented that Counts 7 and 8 would merge for sentencing purposes and asked for “a sentence of 15 years, suspend all but ten years” for the merged offenses, which the prosecutor observed “does carry a mandatory five-year penalty.” Defense counsel similarly acknowledged that “[t]he mandatory minimum in this case is five.” When the court initially issued its sentence, the court announced that the sentence was as follows: “Count 7 [PS § 5-133(c), unlawful possession after a conviction for a crime of violence], five years, suspend all. Regulated firearm, ten years, suspend all but five years, and that’s Count 8 [PS § 5-133(b), unlawful possession after a conviction for a ‘disqualifying crime’].” With respect to the entire sentencing package, the court stated that “[i]t should add up to ten, suspend all but five years.”

Subsequently, the prosecutor asked for clarification because the sentences did not add up to ten years with all but five years suspended, as the circuit court judge had indicated was her intention. The following colloquy occurred:

[THE PROSECUTOR]: My question was with regards to Counts 5 and 8, if I understood the [c]ourt correctly, the [c]ourt would have it run consecutive, but I have a different calculation of the math, if that’s the case. It will be ten years, suspend all but five years, plus 10 years, suspend all but five years, which would be 20, suspend all but ten?

THE COURT: No. I need him to end up doing five years, but I want it to be consecutive in case something happens.

[DEFENSE COUNSEL]: So I think what has to happen mathematically is that *he would get ten, suspend all but five on the mandatory handgun.*

THE COURT: Okay. Do it that way. Ten suspend all but five. And then it will be concurrent and I still have the 20 there. That's my goal.

[THE PROSECUTOR]: Okay. So you're going to run concurrent and not consecutive.

[DEFENSE COUNSEL]: Or you can suspend all the ten and run it consecutive. If you want 20, suspend all but five.

THE COURT: That's what I'm reaching for.

[DEFENSE COUNSEL]: *Then on the mandatory, illegal possession, the 5-133(c), that would be ten, suspend all but five. And then on the second degree assault, that would be ten years consecutive and suspended entirely.*

[THE PROSECUTOR]: Right.

THE COURT: Okay. Yeah, that is going to be 20. That is going to be 20, yes?

[THE PROSECUTOR]: Yes.

THE COURT: Okay. All right.

(Emphasis supplied.) The State observes that, on appeal, Cooper does not appear to challenge the viability of this colloquy as a clarification of the sentences the court was imposing. The clarification benefitted Cooper in that it changed his consecutive sentence on Count 5 from ten years with all but five years suspended to ten years suspended entirely.

B. Analysis

Cooper asserts that the conviction and sentence imposed for violating PS § 5-133(c) (Count 7) must be vacated because the jury did not actually convict Cooper of having been

previously convicted of a crime of violence. The State responds that this issue is not cognizable as an illegal sentence claim, and, in any event, is meritless. As we shall explain, we agree with the State.

First, we observe that Cooper does not assert that this claim was raised before and decided by the circuit court. Indeed, at trial, defense counsel specifically stipulated that the stipulation was to the predicate offense for both PS § 5-133(b) and PS § 5-133(c) when defense counsel informed the court that “the defense agrees that if [Cooper] were found guilty of B, he would . . . be found guilty of C and vice versa because we’ve stipulated.” Because this issue was not only not preserved but affirmatively disclaimed by defense counsel below, Cooper seeks to present the issue as one of sentence illegality on appeal.

As we explained *supra* in Part I of this opinion, although the court may correct an illegal sentence at any time, including when a “defendant failed to object in the trial court at the sentencing hearing,” *Bailey, supra*, 464 Md. at 696, “the scope of the court’s authority under this Rule is ‘narrow.’” *Id.* at 697 (citation omitted). An illegal sentence claim cannot be used to “challeng[e] the merits of a conviction” or raise an “alleged error in the trial or proceedings that resulted in the sentence.” *Farmer v. State*, 418 Md. 203, 225 (2022). Cooper does not challenge the legality of the sentence itself. Rather, Cooper’s challenge to the conviction stems from an assertion that the stipulation did not specifically include details of the underlying predicate offense. This would, at most, present a potential claim of evidentiary sufficiency that is not cognizable as an illegal sentence claim. *See, e.g., Chaney v. State*, 397 Md. 460, 467 (2007) (holding that a claim that “no evidentiary

foundation was laid” to support a restitution order was not cognizable as a claim of sentence illegality).

Furthermore, assuming *arguendo* that this issue was somehow preserved, we would reject Cooper’s assertion that the conviction and sentence for PS § 5-133(c) must be vacated because the jury did not find that he had previously been convicted of a crime of violence. Indeed, the entire purpose of a *Carter* stipulation is to avoid the potential prejudice that would arise if a factfinder was presented with information about the nature of an underlying disqualifying crime as we discussed *supra* in Part II (A) of this opinion. “[B]y consenting to a [*Carter*] stipulation,” a criminal defendant “relieve[s] the State of its obligation to prove that he had previously been convicted of a disqualifying crime as part of its case-in-chief.” *Smith v. State*, 225 Md. App. 516, 528 (2015).

Cooper further asserts that even if the conviction for violating PS § 5-133(c) survives, the sentence for violating PS § 5-133(b) must be vacated on unit of prosecution grounds. The State concedes that: (1) Cooper should have a single conviction and sentence for violating PS § 5-133 on unit of prosecution grounds, and (2) Cooper’s sentence for Count 8, violation of PS § 5-133(b), unlawfully exceeds the maximum permissible sentence for the offense. We agree with both parties that Cooper’s unlawful possession of a single firearm can only support one conviction and sentence under PS § 5-133. *See Clark v. State*, 218 Md. App. 230, 251-53 (2014) (holding that when a defendant “was convicted under three subsections of PS section 5-133,” with each conviction “involving the illegal possession of the same regulated firearm,” only one of the three convictions “can stand”).

Accordingly, we shall vacate Cooper’s conviction for Count 8, violation of PS § 5-133(b), because, when resolving an error stemming from multiple convictions on the same unit of prosecution, reviewing courts “affirm the conviction with the greater penalty” and vacate the other(s). *Id.* at 253.

We also agree with both parties that Cooper’s sentence for Count 8 (violation of PS § 5-133(b)) unlawfully exceeds the maximum permissible sentence for the offense. The maximum permissible sentence for violation of PS § 5-133(b) is five years, but Cooper was sentenced to ten years, with all but five years suspended, without the possibility of parole.

The State asserts that Cooper’s sentence for PS § 5-133(c) is also illegal, and we agree. The transcript reflects that when the circuit court initially issued its sentence, the court stated that the sentence for Count 7 (PS § 5-133(c), unlawful possession after a conviction for a crime of violence) was “five years, suspend all,” and the sentence for Count 8 (PS § 5-133(b), unlawful possession after a conviction for a ‘disqualifying crime’) was “ten years, suspend all but five years.” Although the prosecutor, defense counsel, and the circuit court judge attempted to clarify the sentence subsequently, the illegal sentence was reflected on the docket entry and commitment record as well, both of which reflect a sentence of ten years, all suspended for Count 7, and a sentence of ten years, with all but five years suspended, without the possibility of parole, for Count 8.

The sentence imposed for each offense is illegal. The sentence imposed for Count 7 (violation of PS § 5-133(c)) is illegal because PS § 5-133(c) is a felony that is subject to a statutory mandatory minimum sentence of five years’ incarceration. Moreover, the five-

year mandatory minimum sentence may not be suspended, and the defendant is not eligible for parole during the five-year period. The sentence imposed for Count 8 is illegal because the maximum permissible sentence for violation of PS § 5-133(b) is five years. Simply put, the court imposed a PS § 5-133(b) sentence for the PS § 5-133(c) offense (Count 7), and the court imposed a PS § 5-133(c) sentence for the PS § 5-133(b) offense (Count 8). We have already explained that Cooper’s conviction for Count 8, violation of PS § 5-133(b) should be vacated. Because, as we explained *supra*, only one conviction under PS § 5-133 can stand, we shall remand for resentencing on Count 7, violation of PS § 5-133(c).

III.

Cooper’s next assertion is that the circuit court erred in not merging his conviction for transporting a handgun in a motor vehicle (Count 10) with his conviction for transporting a loaded handgun in a motor vehicle (Count 9) for sentencing purposes. The State concedes this issue, and we agree.

“Under federal double jeopardy principles and Maryland merger law, ‘the principal test for determining the identity of offenses is the required evidence test.’” *Christian v. State*, 405 Md. 306, 321 (2008) (quoting *Dixon v. State*, 364 Md. 209, 236-37 (2001)). Under the required evidence test, “we examine the elements of each offense and determine ‘whether each provision requires proof of a fact which the other does not’” *Paige v. State*, 222 Md. App. 190, 206-07 (2015) (quoting *Blockburger v. United States*, 284 U.S. 299, 304 (1932)). “Sentences for two convictions must be merged when: (1) the convictions are based on the same act or acts, and (2) under the required evidence test, the

two offenses are deemed to be the same, or one offense is deemed to be the lesser included offense of the other.” *Brooks v. State*, 439 Md. 698, 737 (2014) (citing *Nicolas v. State*, 426 Md. 385, 400-02 (2012)); *State v. Lancaster*, 332 Md. 385, 391 (1993)).

Both transporting a loaded handgun in a motor vehicle (Count 9) and transporting a handgun in a motor vehicle (Count 10) are found in the same section of the Criminal Law Article. The statute provides, in relevant part:

(a)(1) Except as provided in subsection (b) of this section, a person may not:

* * *

(ii) wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State;

* * *

(v) violate item (i) or (ii) of this paragraph with a handgun loaded with ammunition.

Md. Code (2002, 2021 Repl. Vol.), § 4-203 of the Criminal Law Article (“CL”). Cooper’s convictions for both Count 9 and Count 10 are based upon the same act or acts, and the violation of CL § 4-203(a)(1)(v) contains all of the same elements as the violation of CL § 4-203(a)(1)(ii), plus the additional element of the handgun being “loaded with ammunition.” Therefore, the two offenses merge under the required evidence test. Accordingly, we shall vacate Cooper’s sentence for the lesser-included offense, violation of CL § 4-203(a)(1)(ii), Count 10.

IV.

Finally, both parties agree that the commitment record and docket entries must be corrected to accurately reflect Cooper's sentence for Count 6, reckless discharge of a firearm from a motor vehicle (Count 6).

Reckless discharge of a firearm from a motor vehicle is prohibited by CL § 3-204(a)(2). The maximum permissible sentence for this offense is five years. The sentence announced in open court for Count 6 was "five years, suspend all," but the commitment record and docket entries reflect a ten-year suspended sentence. Although an error in a commitment record is not an issue of sentence illegality, *Scott v. State*, 379 Md. 170, 190-91 (2004), we concur with the parties that the commitment record and docket entries for Count 6 are incorrect. The circuit court will be required to issue an amended commitment record that reflects the changes from this appeal. Accordingly, the circuit court is directed to correct the commitment record and docket entries for Count 6 so that they reflect the sentence announced in open court.

V.

In order to provide clarity to the circuit court on remand, we shall summarize the changes required to Cooper's sentence:

- Consistent with Part II of this opinion, we shall vacate Cooper's conviction and sentence for Count 8, violation of PS § 5-133(b).
- Consistent with Part II of this opinion, we shall vacate Cooper's sentence for Count 7, violation of PS § 5-133(c), and remand for resentencing on that count.

- Consistent with Part III of this opinion, we shall vacate Cooper’s sentence for Count 10, violation of CL § 4-203(a)(1)(ii).
- Consistent with Part IV of this opinion, we direct the circuit court to correct the docket entries and issue a new commitment record that reflects the correct sentence imposed for Count 6 as well as a new commitment record that reflects other changes in Cooper’s sentences that result from this appeal.

Otherwise, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE’S COUNTY AFFIRMED IN PART AND REVERSED IN PART. CONVICTION AND SENTENCE FOR COUNT 8 VACATED. SENTENCE VACATED FOR COUNTS 7 AND 10. CASE REMANDED FOR RESENTENCING ON COUNT 7, FOR CORRECTION OF DOCKET ENTRIES TO ACCURATELY REFLECT THE SENTENCE IMPOSED FOR COUNT 6, AND FOR ISSUANCE OF A NEW COMMITMENT RECORD THAT ACCURATELY REFLECTS THE SENTENCE IMPOSED FOR COUNT 6 AS WELL AS ANY OTHER CHANGES IN THE SENTENCES RESULTING FROM THIS APPEAL. COSTS TO BE DIVIDED EQUALLY BETWEEN THE PARTIES.