

Circuit Court for Montgomery County
Case No. C-15-CR-22-000476

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2201

September Term, 2024

DENNIS HUMBERTO VIDAL-ROMAN

v.

STATE OF MARYLAND

Arthur,
Tang,
Beachley, Donald E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: June 29, 2026

*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 to Rule 1-104(a)(2)(B).

Dennis Humberto Vidal-Roman was convicted of sexual abuse of a minor after a bench trial in the Circuit Court for Montgomery County. He contends that his sentence was illegal, because, he says, the sexual abuse conviction was based on an uncharged fourth-degree sexual offense.

For the reasons stated herein, we affirm.

BACKGROUND

The State charged Vidal-Roman with sexually abusing his girlfriend's daughter, C., between March 1, 2020, and June 24, 2021. C., who was born in November 2006, was 13 years old when the abuse allegedly began but turned 14 while the abuse allegedly continued.

The indictment against Vidal-Roman contained seven counts:

- Count One alleged sexual abuse of a minor from March 1, 2020, through June 24, 2021.
- Count Two alleged second-degree rape by means of vaginal intercourse between March 1, 2020, and November 20, 2020 (i.e., vaginal intercourse with a victim under the age of 14).
- Count Three alleged second-degree rape by the means of the digital penetration of the victim's vagina between March 1, 2020, and November 20, 2020 (i.e., the digital penetration of the vagina of a victim under the age of 14).
- Count Four alleged the commission of a third-degree sexual offense by means of the digital penetration of the victim's vagina between November

21, 2020, and June 24, 2021 (i.e., engaging in a sexual act with a victim who was 14 or 15 years old while the defendant was at least 21 years old).

- Count Five alleged the commission of a third-degree sexual offense by means of touching the victim’s breast between March 1, 2020, and November 20, 2020 (i.e., engaging in a sexual act with a victim who was under the age of 14 while the defendant was at least four years older).
- Count Six alleged the commission of a third-degree sexual offense by means of touching the victim’s vaginal area between March 1, 2020, and November 20, 2020 (i.e., engaging in a sexual act with a victim who was under the age of 14 while the defendant was at least four years older).
- Count Seven alleged the commission of a third-degree sexual offense by means of kissing the victim’s breast between March 1, 2020, and November 20, 2020 (i.e., engaging in a sexual act with a victim who was under the age of 14 while the defendant was at least four years older).

The indictment did not charge Vidal-Roman with committing a fourth-degree sexual offense.

After a three-day trial in November 2023, a jury acquitted Vidal-Roman of Counts Two, Three, Four, and Seven but could not reach a verdict on Counts One, Five, and Six. In other words, the jury acquitted Vidal-Roman of having vaginal intercourse with the victim before her fourteenth birthday, digitally penetrating her vagina both before and after her fourteenth birthday, and kissing her breast before her fourteenth birthday. The

jury could not reach a verdict on the charge of sexual abuse of a minor and on the charges that Vidal-Roman touched the victim's breast and vagina before her fourteenth birthday.

The State opted to retry Vidal-Roman on the charges on which the jury could not reach a verdict. He elected a bench trial.

At trial, C. testified that during the COVID-19 pandemic Vidal-Roman came into her room one night and touched her chest under her clothes. She also testified that he came into her room on other nights and touched her chest and her vagina beneath her clothes. She estimated that Vidal-Roman came into her room and touched her about ten times. Sometimes, but not often, she said, his fingers went inside her vagina. Most of the time, he would touch her breasts. She did not specify whether Vidal-Roman's conduct occurred before or after her fourteenth birthday.

C. also testified that on June 24, 2021, after her fourteenth birthday, Vidal-Roman came into her room while she was lying on a bed facing the wall, sat down, and started to grab her chest just as her mother walked in. Her mother kicked him out of the room. That morning, C. told her mother what Vidal-Roman had been doing for the past year.

C.'s mother testified that on the morning of June 24, 2021, she heard C. saying, "No, . . . go away, go away, go away." She went to the children's room, where she saw Vidal-Roman lying on C.'s bed and grasping her breasts above her clothes. When she demanded to know what Vidal-Roman was doing, he got up to go without saying anything. Before Vidal-Roman was out of the room, she asked C. whether he had been touching her, and C. responded that he had. She asked C. whether Vidal-Roman had

touched her anywhere else, and C. responded that he had touched her vagina. Vidal-Roman claimed that C. was lying.

C.’s aunt testified that on June 24, 2021, C.’s father brought C. to work and asked her (the aunt) to call the police. The aunt asked C. what had happened. C. told her that Vidal-Roman had been touching her breast.

A police detective testified that C. told her that Vidal-Roman had been touching her inappropriately since the beginning of the pandemic.

Vidal-Roman testified in his defense and called a number of witnesses. In essence, his defense was that he did nothing wrong; that he would occasionally tickle the children to wake them up; and that he had been tickling C., on the ribs, over the blanket, on the morning of June 24, 2021.

The trial judge found Vidal-Roman guilty of sexual abuse of a minor (Count 1) but not guilty of the third-degree sexual offenses of touching C.’s breast and vaginal area before her fourteenth birthday (Counts 5 and 6).

The court acquitted Vidal-Roman of the third-degree sexual offenses because it was not persuaded beyond a reasonable doubt that the conduct occurred before C.’s fourteenth birthday, an essential element of the offense. The court explained: “[C.]’s details were very shaky about specifics other than the events that happened on June 24th, 2021.”

The court based the conviction for sexual abuse of a minor in part on Vidal-Roman’s conduct on June 24, 2021. That conduct, the court explained, “was either an uncharged sexual offense in the 4th degree” or “inappropriate touching that would

amount to molestation,” an attribute of “sexual abuse.” Maryland Code (2002, 2021 Repl. Vol.), § 3-602(a)(4)(i) of the Criminal Law (“Crim. Law”) Article. The court also based the conviction for sexual abuse on the “ongoing touching on the breast,” which would amount to “sexual molestation” whether it occurred before or after C.’s fourteenth birthday.

The court sentenced Vidal-Roman to ten years of incarceration but suspended all but four. The term of incarceration was to be followed by three years of supervised probation.¹

Vidal-Roman noted a timely appeal.

QUESTION PRESENTED

Vidal-Roman poses one question: “Did the trial court err in convicting [him] of sexual abuse of a minor on the basis of an uncharged fourth-degree sexual offense?”

STANDARD OF REVIEW

Vidal-Roman asserts that the circuit court imposed an illegal sentence. “An appellate court reviews without deference the issue of whether a sentence is illegal.” *Nichols v. State*, 461 Md. 572, 598 (2018).

DISCUSSION

The court convicted Vidal-Roman of sexual abuse of a minor, in violation of Crim. Law § 3-602. The statute defines “sexual abuse” as an “act that involves sexual

¹ The circuit court record reflects that Vidal-Roman was deported to Peru in 2025.

molestation or exploitation of a minor, whether physical injuries are sustained or not.”

Id. § 3-602(a)(4)(i). Under the statute:

“Sexual abuse” includes:

1. incest;
2. rape;
3. sexual offense in any degree; and
4. any other sexual conduct that is a crime.

Id. § 3-602(a)(4)(ii).

In arguing that his conviction and sentence were illegal, Vidal-Roman begins by citing Crim. Law § 3-308(e)(1). That statute states: “Unless specifically charged by the State,” a fourth-degree sexual offense “may not be considered a lesser included crime of any other crime.”

Vidal-Roman argues that the court found him guilty of sexual abuse of a minor “based on conduct that would constitute a fourth-degree sexual offense”—specifically, having “sexual contact with another without the consent of the other.” Crim. Law § 3-308(b)(1). He posits that the incident on June 24, 2021, and the earlier incidents in which he touched C.’s breast, were fourth-degree sexual offenses.

Based on that premise, Vidal-Roman argues that the court “effectively found” that he committed a fourth-degree sexual offense. He contends that an uncharged fourth-degree sexual offense “cannot be the basis for the court to find [him] guilty of sexual abuse of a minor[.]” Invoking the principles that ““a defendant may not be found guilty

of a crime of which he was not charged in the indictment[.]”² and that “a ‘[c]onviction upon a charge not made would be a sheer denial of due process,’”³ Vidal-Roman concludes that his conviction for sexual abuse of a minor (and thus his sentence) is illegal.

Vidal-Roman’s argument is rhetorically alluring but legally flawed. Vidal-Roman was not found guilty of a crime with which he was not charged in the indictment. Nor did Vidal-Roman suffer a conviction upon a charge not made. Vidal-Roman was convicted of sexual abuse of a minor, a crime that was charged in Count I of his indictment. Vidal-Roman was not convicted of committing a fourth-degree sexual offense or of any other crime that the indictment did not charge.

The flaw in Vidal-Roman’s argument is apparent from his citation to *Stubbs v. State*, 406 Md. 34, 38 (2008), a case concerning Crim. Law § 7-108(d), a statute similar to Crim. Law § 3-308(b)(1). Section 7-108(d) states: “Unless specifically charged by the State, theft of property or services with a value of less than \$100 as provided under § 7-104(g)(3) of this subtitle may not be considered a lesser included crime of any other crime.” Thus, in *Stubbs*, 406 Md. at 48, the Court held that, “the defendant who has not

² *Johnson v. State*, 427 Md. 356, 375 (2012) (quoting *Turner v. State*, 242 Md. 408, 414 (1966)).

³ *Stickney v. State*, 124 Md. App. 642, 646 (1999) (quoting *De Jonge v. Oregon*, 299 U.S. 353, 362 (1937)).

been *specifically charged* with theft under \$100 cannot be convicted of that offense.” (Emphasis in original.)⁴

As applied to this case, *Stubbs* dictates that, because the State did not specifically charge Vidal-Roman with committing a fourth-degree sexual offense, he cannot be “convicted of that offense.” Again, however, Vidal-Roman was not convicted of a fourth-degree sexual offense. He was convicted only of sexual abuse of a minor. By its terms, Crim. Law § 3-308(e)(1) does not insulate Vidal-Roman from a conviction for sexual abuse of a minor or for any other offense aside from a fourth-degree sexual offense.

To reiterate, Crim. Law § 3-308(e)(1) provides that, “[u]nless specifically charged by the State,” a fourth-degree sexual offense “may not be considered a lesser included crime of any other crime.” The literal language of the statute means that a court cannot convict a defendant of an uncharged fourth-degree sexual offense on the premise that it is a lesser-included offense of some greater offense of which the defendant was convicted. But, again, Vidal-Roman was not convicted of an uncharged offense.

At bottom, Vidal-Roman seems to suppose that a court cannot convict a defendant of sexual abuse of a minor by engaging in conduct that might constitute a fourth-degree

⁴ Nonetheless, the Court also held that, where the State charged the defendant with theft of property worth less than \$500.00 but failed to establish that the stolen property was actually worth more than \$100.00, the defendant was not entitled to a judgment of acquittal. *Stubbs v. State*, 406 Md. at 44. In addition, the Court held that even though the only evidence in the record established that the stolen goods were worth less than \$100.00, the court could still impose a sentence that exceeded the maximum penalty for theft under \$100.00. *Id.* at 54.

sexual offense unless the indictment specifically charges the defendant with committing a fourth-degree sexual offense. We see nothing in Crim. Law § 3-308(e)(1) that would impose any such limitation on a prosecutor’s discretion to decide what offenses to charge and not to charge. Nor would such a limitation comport with the general purpose of the child abuse statute, which is “to protect minors from abuse[.]” *Degren v. State*, 352 Md. 400, 428 (1999); *accord Turenne v. State*, 488 Md. 239, 267 n.12 (2024).

**JUDGMENT OF THE CIRCUIT COURT FOR
MONTGOMERY COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**