

Circuit Court for Baltimore County
Case No. 98-CR-1010

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2586

September Term, 2016

DANA SYLVESTER WHITLEY

v.

STATE OF MARYLAND

Woodward, C.J.,
Friedman,
Kenney, James A., III.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 6, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 1998, following a jury trial in the Circuit Court for Baltimore County, Dana Sylvester Whitley, appellant, was convicted of the attempted second-degree murder of David Johnson and the attempted second-degree murder of Keith Downing. Whitley was sentenced to twenty years' imprisonment for each conviction, with the sentences ordered to run consecutively. This Court affirmed the judgments. *Whitley v. State*, No. 1427, September Term, 1998 (filed March 21, 2000).

In 2016, Whitley filed a motion to correct an illegal sentence pursuant to Md. Rule 4-345(a), in which he asserted that his sentences should have merged under the rule of lenity. The circuit court denied the motion. Whitley appeals. We affirm.

Our opinion in Whitley's direct appeal included the following facts established at trial:

The incident began when a group of men walked down the alley . . . [and] [s]omeone in the group fired shots in the direction of David Johnson and Keith Downing, causing everyone in the area to disperse. Johnson and Downing ran into Joseph Streat's basement apartment. One of the assailants followed them and continued to shoot.

Whitley v. State, supra, slip op. at 2. Shortly after the incident, several eye-witnesses implicated Whitley as the gunman. *Id.* As noted, the jury convicted Whitley of two counts of attempted second-degree murder. Under the facts of this case, merger of the sentences was not required because Whitley was convicted of attempting to murder two victims, which constituted separate and distinct crimes. Accordingly, the circuit court did not err in denying his motion to correct an illegal sentence.

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