

Circuit Court for Dorchester County  
Case No. 09-K-13-015007

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2646

September Term, 2018

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RODNEY DONTE STEPHENSON

v.

STATE OF MARYLAND

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Friedman,  
Shaw Geter,  
Zarnoch, Robert A.  
(Senior Judge, Specially Assigned)

JJ.

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Opinion by Shaw Geter, J.

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Filed: April 23, 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.

This case arises from a second remand by this Court to the Circuit Court for Dorchester County. Appellant Rodney Stephenson challenges his sentence wherein, the Circuit Court merged his conviction for transporting a handgun with his conviction for use of a firearm in the commission of a felony and resentenced him on related counts to a term of imprisonment of sixty years with twenty-three years suspended.

Appellant presents the following question for our review:

1. Whether the Circuit Court erred by resentencing Stephenson to more than twenty years?

For the reasons set forth below, we affirm.

### **BACKGROUND**

On April 26, 2013, appellant was involved in a shooting incident that occurred at a bar in Cambridge Maryland. He was subsequently convicted of first-degree assault, second-degree assault and reckless endangerment of Randy Jackson and Tyvrin Todd; wearing, carrying, or transporting a handgun upon his person; possession of a handgun by a disqualified person; use of a firearm in the commission of a felony; and disorderly conduct. On January 17, 2014, the circuit court sentenced him to a ninety-five year term of imprisonment.

Appellant timely appealed. In an unreported opinion of this court, we found appellant's conviction for wearing, carrying, or transporting a handgun must merge with his conviction for use of a handgun in the commission of a felony for sentencing purposes, and affirmed his conviction otherwise. *Stephenson v. State*, 2015 WL 5823055 (Aug. 6, 2015).

On May 18, 2016, appellant was presented to the circuit court, however his attorney advised the court that he could not “take any action in the case” and merely stood by. The court, per our opinion, proceeded to merge the handgun convictions and announced its sentence of 85 years of incarceration. Appellant noted a timely appeal, and we remanded the case for a “resentencing in which appellant has the right to both counsel and of allocution.”

The circuit court, on October 12, 2018, held a resentencing hearing, where appellant was represented by counsel, who presented mitigating information and appellant had the opportunity to allocute. The court resentenced appellant to a total sentence of sixty years of incarceration, suspending all but twenty-three years.

Appellant noted this appeal.

## DISCUSSION

### **I. The circuit court did not err in resentencing appellant to more than twenty years.**

Appellant argues the court’s pronouncement of his sentence in 2014 was ambiguous and uncertain as to which counts were to run consecutive. As a result, the total sentence, absent the consecutive terms was a total of twenty years, and therefore the longest sentence the court could properly impose in 2018 was twenty years.

The State argues appellant’s 2018 sentence of 60 years with all, but twenty-three years suspended, was actually a reduction in sentence from 2014 and 2016, and it is a legal sentence. The State contends that in 2014, there was no uncertainty or lack of clarity when the court imposed consecutive sentences for each count, with one exception, disorderly

conduct, which was made concurrent. That sentence totaled ninety-five years of incarceration.

An illegal sentence is one where the “punishment meted out was . . . in excess of that prescribed by the relevant statutes, multiple terms were . . . imposed for the same offense, [or] the terms of the sentence itself [were] legally or constitutionally invalid.” *Carlini v. State*, 215 Md. App. 415, 425 (2013). “Whether a sentence is an illegal sentence under Maryland Rule 4-345(a) is a question of law that is subject to *de novo* review.” *State v. Crawley*, 455 Md. 52, 66 (2017). Determining the maximum sentence allowed by law is a question of law. *Mateen v. Saar*, 376 Md. 385 (2003).

In 2014, at the conclusion of appellant’s sentencing hearing, the trial court stated:

I’m going to start with count fourteen the count that is possession of a firearm after conviction of a disqualifying crime. It is the judgment and sentence of this [c]ourt that you Rodney Donte Stephenson be committed to the custody of the Commissioner of Correction to be confined under the jurisdiction of the Department of Correction for a period of fifteen years, five of those without the possibility of parole.

Regarding count twelve handgun in the commission of a felony the sentence is to the Commissioner of correction for twenty years consecutive.

Count eleven handgun on person second offense ten years, one year without the possibility of parole consecutive.

The reckless endangerment counts, nine and ten, will merge.

And the disorderly conduct charge will be sixty days concurrent.

Now, with regard to the first degree assault upon Tyvrin Lament Todd the sentence is to the Division of Correction for twenty-five years consecutive.

And count six your first degree assault upon randy Donte Jackson the sentence is twenty-five years consecutive.

The crimes of violence make you ineligible for parole until at least fifty percent of those sentences are served. The crimes of violence being the first degree assaults, handgun in commission of a felony.

All right. Those are the sentences.

At the onset of our analysis, we note, “[t]he law does not permit speculation as to the sentencing judge’s subjective intent in order to ascertain the extent of the convicted person’s punishment. *Costello v. State*, 240 Md. 164, 168 (1965). Moreover, “[s]entencing is a definite and objective matter, and it is for that reason that the only sentences known to the law are those which appear in the public records of the courts.” *Id.*

In resolving a dispute regarding the terms of a sentence, we typically examine, three sources: the transcript of the sentencing, the docket entry, and the order for probation. *Jackson v. State*, 68 Md. App. 679, 686 (1986), “The transcript of the pronouncement of the sentence in open court and its entry on the court docket are objective and tangible manifestations of the judgment.” *Id.* As such, “the determination of the terms of the judgment ordinarily and necessarily involves review of the transcript of the proceedings and of the docket entries.” *Id.*

Here the court stated, as it began its sentencing:

“Mr. Stephenson, I’m going to exceed guidelines in your case because of the outrageous conduct that you participated in on this night and the heinous nature of your crimes . . . In my opinion you show no remorse for your conduct other than feeling sorry for yourself. I believe that you are a mean spirited and dangerous person and I believe you forfeited your right to be a member of this society for a long period of time.”

The court then pronounced its sentence, merging two counts, stating each count as consecutive, except the disorderly conduct conviction, which was to run concurrently. The docket entries and commitment order also reflect the sentences were consecutive. Our conclusion, therefore, is the sentences were to run consecutive and the court’s documents mirror its pronouncements.

Having resolved that the 2014 sentence was proper, we now turn to the 2016, where the trial court reduced appellant’s sentence to eighty-five years of incarceration. We hold the merger of the handgun sentences did not render the sentences in all counts concurrent. Rather, in accord with *Butcher v. State*, “the next valid consecutive sentence began at the time set for the commencement of the invalidated consecutive sentence.” 196 Md. App 477, 492 (2010). The 2016 sentence was then remanded for resentencing. Thus, in 2018, because the 2014 sentence was a legal one, the court was not limited to 20 years. In addition, where a new sentence is less than the original sentence, any change does not constitute an illegal sentence. See *Nichols v. State*, 461 Md. 572, 605–07 (2018) (citing *Twigg v. State*, 447 Md. 1, 30, (2016)).

We therefore conclude the court properly sentenced appellant.

**JUDGMENTS OF THE CIRCUIT COURT  
FOR DORCHESTER COUNTY  
AFFIRMED; COSTS TO BE PAID BY  
APPELLANT.**