Circuit Court for Wicomico County
Case No. 22-K-00-001549

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 304

September Term, 2018

WILLIAM HENRY WATSON

v.

STATE OF MARYLAND

Friedman,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 3, 2019

In 2001, in the Circuit Court for Wicomico County, William Henry Watson, the appellant, was convicted by a jury of 26 crimes stemming from two armed robberies committed on September 5, 2000 and September 7, 2000. On July 20, 2001, the court sentenced Mr. Watson as follows:

September 5, 2000:

- Count 5: 20 years for armed robbery
- Count 10: 8 years for use of a handgun in the commission of a crime of violence consecutive to Count 5
- Count 12: 3 years for wearing, carrying, or transporting a handgun concurrent to Count 10
- Count 13: 3 years for illegal possession of a regulated firearm consecutive to Count 10

September 7, 2000:

- Count 16: 10 years for armed robbery consecutive to Count 10
- Count 21: 8 years for use of a handgun in a crime of violence consecutive to Count 16
- Count 23: 3 years for wearing, carrying, or transporting a handgun concurrent to Count 21
- Count 24: 6 years for second-degree assault concurrent to Count 16

The remaining counts were merged for sentencing purposes. The total executed sentence is 46 years.[1]

[1] Mr. Watson's convictions were affirmed on direct appeal, but this Court held that the convictions for wearing, carrying, or transporting a handgun (Counts 12 and 23) should have merged for sentencing purposes with the convictions for use of a handgun in the commission of a crime of violence (Counts 10 and 21). *See Watson v. State*, No. 1181, Sept. Term 2001 (Md. App. May 8, 2002). On remand, the circuit court amended Mr. Watson's commitment record to reflect the merger of Count 23, but did not merge Count 12. Because the sentences on Counts 12 and 23 both were run concurrently, the merger of these counts did not affect Mr. Watson's total executed sentence.

In 2018, Mr. Watson filed a motion to correct an illegal sentence, which the State opposed. By order entered April 9, 2018, the motion was denied. Mr. Watson challenges the denial of his motion on multiple grounds. We shall affirm.

Mr. Watson first argues that his conviction for use of a handgun in the commission of a crime of violence pursuant to Art. 27 (1957, 1996 Repl. Vol.), § 36B(d) (Count 10) should have merged with his conviction for illegal possession of a firearm pursuant to Art. 27, § 445(d) (Count 13) under the rule of lenity[2] because both arose from a "single transaction[,]" *i.e.*, the September 5, 2000 armed robbery. The rule of lenity applies when the statute or statutes are "ambiguous as to whether the Legislature intended to impose multiple punishments" for violations arising out of a single act or transaction. *Alexis v. State*, 437 Md. 457, 485 (2014). Here, we conclude that there was no such ambiguity.

The use of a handgun in a crime of violence statute at that time provided that a person convicted of the offense was "guilty of a separate misdemeanor" and, for a first offense, would be sentenced to a term of not less than 5 years and not more than 20 years, "in addition to any other sentence imposed" for the commission of the felony. Art. 27, § 36B(d). A conviction for illegal possession of a firearm predicated upon a prior

[2] He does not argue merger under the required evidence test. In any event, because each of the offenses includes elements that the other does not, that test would not be satisfied. *Compare* Art. 27 § 36B(d) (requiring proof that the defendant used a handgun while committing a crime of violence or a felony) *with* Art. 27 § 445(d) (requiring proof that the defendant had a prior conviction for a violent crime or a felony that prohibited him from possessing a handgun).

conviction for a felony was then a misdemeanor subject to a fine of $10,000 or a sentence of up to 5 years, or both. Art. 27, § 449(e). Numerous Maryland appellate decisions interpreting handgun laws both then and now have held that the legislature has evinced a clear intent to punish separate statutory handgun crimes cumulatively. *See Frazier v. State*, 318 Md. 597, 604, 613-14 (1990) (holding that "convictions and sentences for wearing, carrying, or transporting a handgun and for possessing a pistol or revolver by a person who has been convicted of a crime of violence" do not merge after reviewing legislative history of handgun statutes and noting that the legislature may choose to "punish certain conduct more severely if particular aggravating circumstances are present, by imposing punishment under two separate statutory offenses"); *Pye v. State*, 397 Md. 626, 642 (2007) (reaffirming *Frazier*); *Wimbish v. State*, 201 Md. App. 239, 275 (2011) (convictions for illegal possession of a regulated firearm after having been convicted of a crime of violence did not merge with conviction for possession of a short-barreled shotgun even though the crimes arose from a single transaction because the statutes were "directed at different legislative concerns").[3] The reasoning in those cases

[3] Mr. Watson's reliance upon *Johnson v. State*, 56 Md. App. 205 (1983), *superseded by statute as stated in Garner v. State*, 442 Md. 226 (2015), is misplaced. There the court imposed two consecutive sentences for use of a handgun in the commission of a crime of violence "when a single handgun [was] used against a single victim in a single transaction encompassing the commission of two separate and distinct felonies . . . ." *Id.* at 218. That was not the case here and, in any event, the statute was amended to permit the imposition of "separate consecutive sentences for each conviction for use of a handgun in the commission of a crime of violence" after the defendant in *Johnson* was charged. *Garner*, 442 Md. at 247.

applies with even greater force here, where one of the statutes criminalizes the use of the handgun to perpetrate a crime and the other statute criminalizes possession of the firearm by a disqualified person, two distinct legislative aims. The offenses did not merge under principles of lenity.

Mr. Watson's next contention, as we understand it, is that the court illegally imposed two consecutive sentences for use of a handgun in the commission of a crime of violence, both arising from the first armed robbery on September 5, 2000. He is mistaken. The two separate handgun use convictions were imposed for the two separate armed robberies. The sentences each were run consecutive to the sentence for the armed robbery from which the conviction arose and were not illegal.

The remainder of Mr. Watson's contentions of error are not cognizable on a motion to correct an illegal sentence. *See, e.g.*, *Carlini v. State*, 215 Md. App. 415, 425-26 (2013) ("The illegality must actually inhere in the sentence itself and must not be a procedural illegality or trial error antecedent to the imposition of sentence."). He argues that an amendment to his commitment record that corrected an initial miscalculation of his total executed sentence was made without complying with Rule 4-345(f), which requires an open court hearing before a sentence may be modified.[4] This does not

[4] Mr. Watson's commitment record initially miscalculated his total time to be served as 49 years. It was amended less than two months later to reduce the "total time to be served" to 46 years. This correction reflected that the sentences on Counts 13 (3 years) and 16 (10 years) both were run consecutive to Count 10, eliminating the sentence on Count 13 from the calculation of the total executed sentence.

amount to an illegality inhering in his sentence and, in any event, no hearing was necessary to correct an error in the commitment record.

Mr. Watson next asserts that he was not given credit for 26 days of time served. An error in calculating credit for time served does not amount to an illegal sentence. *Howsare v. State*, 185 Md. App. 369, 398 (2009). The proper remedy for such a claim is to file a motion to correct the commitment order. *Id*.; *see also* Md. Rule 4-351.

Finally, he argues that the judge who presided over his criminal trial should not have ruled upon his motion to correct an illegal sentence. Maryland law does not prohibit a judge from ruling upon the legality of a sentence he or she imposed.

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