

Circuit Court for Anne Arundel County
Case No: 02-K-01-000070

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3106

September Term, 2018

DERRICK JONES

v.

STATE OF MARYLAND

Berger,
Friedman,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 27, 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.

In 2001, in the Circuit Court for Anne Arundel County, Derrick Jones, appellant, pled guilty to two counts of first-degree assault, use of a handgun in the commission of a felony or crime of violence, and first-degree burglary. The court (Judge Clayton Greene, Jr., presiding) sentenced Mr. Jones as follows:

Count 3 (first-degree assault): 25 years
Count 6 (handgun offense): 20 years, concurrent to Count 3
Count 10 (first-degree assault): 15 years, consecutive to Counts 3 & 6
Count 13 (first-degree burglary): 20 years, consecutive to “the aggregate”

After pronouncing the individual sentences, the court stated: “that is a total of 60 years. The court will suspend all but 30 years. When you are released, you will be on probation for a period of 5 years. That probation will be supervised by the Department of Parole and Probation.” The Commitment Record also reflected a total term of 60 years’ imprisonment, with all but 30 years suspended.

In 2018, the State, at the behest of the Commitment Records Specialist for the Maryland Division of Correction, moved to amend the Commitment Record because it did not reflect what portion of what sentences were suspended. At a hearing held on January 4, 2019, Mr. Jones contended that the sentence, as pronounced by Judge Greene was “ambiguous” because the court had not indicated what sentences should be suspended and, therefore, under the rule of lenity the court should amend the Commitment by suspending all the time imposed on Counts 10 and 13 (35 years), which would result in an aggregate sentence of 60 years, all but 25 years suspended. The court (Judge William Mulford, II, presiding), disagreed, noting that the sentencing transcript indicates that there was “no doubt” that Judge Greene intended to impose a 60-year term with all but 30 years

suspended. Accordingly, the court corrected the Commitment by imposing the same sentence imposed by Judge Greene, but suspending 10 years of the 15-year sentence for Count 10 and suspending, in total, the 20-year sentence imposed for Count 13 – leaving in place a total sentence of 60 years, all but 30 years suspended.

Mr. Jones appeals Judge Mulford’s ruling and, as he did in the circuit court, he invokes the rule of lenity and asserts that Judge Mulford should have suspended all the time imposed for both Counts 10 and 13. Specifically, he asserts that Judge Mulford erred in “arbitrarily suspend[ing] 10 years from Count 10, rather than resolving the ambiguity in [his] favor by suspending the entirety of that (15 year) sentence.”

The State counters that “there was no ambiguity in Judge Greene’s sentence as to how much time was suspended from Jones’s aggregate sentence” and the “only ambiguity was as to which of the individual sentences that 30 years of suspended time would come from.” The State maintains that the manner in which Judge Mulford corrected the sentence was proper because (1) Judge Greene undisputedly intended to suspend all but 30 years of the 60-year term and (2) suspending 30 years in any other manner would not “produce a more lenient result” because it would not change the amount of time Mr. Jones would have to serve before he is eligible for parole.

We agree with the State. Mr. Jones was clearly apprised of the term of imprisonment imposed by Judge Greene – 60 years, with all but 30 years suspended – and

in that respect, the sentence was unambiguous. Judge Mulford merely corrected Judge Greene’s failure to allocate the suspended time. Accordingly, we perceive no error in the judgment.

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