

Circuit Court for Wicomico County  
Case No. 22-K-06-000549

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 332

September Term, 2023

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ROBERT FREDERICK LOWE

v.

STATE OF MARYLAND

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Wells, C.J.,  
Zic,  
Wright, Alexander, Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: November 6, 2023

\*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Robert Frederick Lowe, appellant, appeals the denial, by the Circuit Court for Wicomico County, of his motion to correct illegal sentence. For the reasons that follow, we shall affirm.

In 2007, appellant was convicted of possession with intent to distribute 50 grams or more of cocaine (volume dealer offense) and other related offenses following a jury trial. Relying upon two separate and distinct convictions for distribution of cocaine and possession of cocaine, the State filed a notice of intent to seek enhanced punishment on the grounds that appellant was a subsequent offender. The court sentenced appellant to a term of 20 years' imprisonment, the first ten years with limited parole possibilities, for the volume dealer offense.<sup>1</sup> When pronouncing this sentence, the court stated that the first ten years would be “with limited possibility of parole as a subsequent offender *under Criminal Law Article Section 5-609(b)*” (emphasis added).

In 2023, appellant filed a motion to correct illegal sentence claiming that the sentencing court improperly relied on Section 5-609 of the Criminal Law Article to enhance the mandatory minimum portion of his sentence because that statute applies only to certain hallucinogenic substances and not to crack cocaine. The State filed an opposition asserting that appellant's claim was barred by the law of the case doctrine because this

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<sup>1</sup> The court also sentenced appellant to a concurrent term of twenty years' imprisonment, with limited parole possibilities for the first ten years for possession with intent to distribute crack cocaine. That sentence was subsequently vacated on the grounds that his conviction should have merged, for sentencing purposes, into his conviction for being a volume dealer.

Court had previously rejected the same claim in 2014. The circuit court denied the motion without a hearing. This appeal followed.

On appeal, appellant contends that the court imposed an illegal sentence when it relied on Section 5-609(b) to impose a ten year mandatory minimum sentence. However, appellant previously raised that claim in a 2011 motion to correct illegal sentence. When the circuit court denied that motion, appellant appealed, and we affirmed. *See Lowe v. State*, No. 2709, Sept. Term 2011 (filed July 10, 2014). While recognizing that Section 5-609 “clearly does not encompass a violation of Crim. Law § 5-612[.]” we noted that the “court intended to impose an enhanced penalty because of his prior CDS convictions[;]” that appellant “qualified as a repeat offender” under Crim. Law § 5-905 because “he had a least one prior CDS conviction[;]” and therefore the sentencing court “had the authority to double the mandatory minimum of five years’ imprisonment with limited parole possibilities” even though it mentioned the wrong statute at sentencing. We thus held that “the court’s imposition of a twenty-year sentence, the first ten years with limited parole possibilities, for the [volume dealer] offense was a legal sentence.”

Under the law-of-the-case doctrine, “a decision that is rendered in a prior appeal is binding in a later appeal.” *Nichols v. State*, 461 Md. 572, 578 (2018) (cleaned up). Put another way, once this Court rules on a question or issue, that ruling “becomes the law of the case” and is binding on the parties and circuit court alike. *Id.* (cleaned up). The Supreme Court of Maryland has specifically held that this doctrine forbids “relitigation of an ‘illegal sentence’ argument that has been presented to[,] and rejected by[,] an appellate court.” *Id.* at 593. Because appellant’s 2023 motion to correct illegal sentence raised the

same argument that this Court has already rejected, the circuit court did not err in denying that motion based on the law-of-the-case doctrine.

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