Circuit Court for Baltimore City
Case No. 108144022

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1296

September Term, 2022

TAMEKIA D. MARTIN

v.

STATE OF MARYLAND

Wells, C.J.,
Friedman,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.
Concurring Opinion by Friedman, J.

Filed: November 3, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Tamekia D. Martin, appellant, appeals from an order by the Circuit Court for Baltimore City, purporting to reinstate her prior conviction for first-degree child abuse of her son, D. We shall affirm.

BACKGROUND

Because the only issue in this appeal is purely procedural, we provide only a truncated exposition of the underlying facts. *See*, *e.g.*, *Hill v. State*, 418 Md. 62, 66-67 (2011) (omitting mention of the evidence adduced at trial where the issue on appeal was whether the trial court had correctly denied a motion to suppress the defendant's statements); *Foster v. State*, 247 Md. App. 642, 646-47 (2020) (omitting recitation of the facts surrounding the underlying offenses where the only issue on appeal involved preservation of a claim of voir dire error), *cert. denied*, 475 Md. 687 (2021). The following background is derived largely from our unreported opinion in a prior appeal directly linked to this case, *Martin v. State*, No. 658, Sept. Term, 2019 (filed Sept. 10, 2020) ("*Martin I*").

In 2008, D., appellant's three-year-old son, suffered a traumatic brain injury while at home in her care. *Martin I*, slip op. at 2. "As a result of these injuries, [D.] suffered from cerebral palsy and 'visual, physical and mental disabilities, requiring the use of a feeding tube, ventilator and wheelchair.'" *Id.* "Shortly after sustaining the injuries, [D.], in a vegetative state, was transferred to Lifeline, Inc., a long-term care facility." *Id.*

Subsequently, an indictment was returned (Case No. 108144022, henceforth "022"), by the Grand Jury for Baltimore City, charging appellant with first- and second-degree child abuse of D. and related offenses. *Id.* In 2009, appellant reached a binding plea agreement with the State, whereby she was permitted to enter an *Alford* plea to first-degree

child abuse of D., and the other charges were nolle prossed. *Id.* at 2-3, 8-9. The court sentenced her to fifteen years' imprisonment, with all but time served suspended, and three years of supervised probation. *Id.* at 3-4.

In 2014, while in a Lifeline facility, D. died from injuries attributed to the abuse he had suffered previously. *Id.* at 4. The State, invoking an exception to double jeopardy as well as the statutory abrogation of the year-and-a-day rule,[1] charged appellant (Case No.

[1] The United States Supreme Court has recognized an exception to double jeopardy "may exist where the State is unable to proceed on the more serious charge at the outset because the additional facts necessary to sustain that charge have not occurred or have not been discovered despite the exercise of due diligence." *Illinois v. Vitale*, 447 U.S. 410, 420 n.8 (1980) (quotation marks and citation omitted). In *Whittlesey v. State*, 326 Md. 502, 521-22 (1992), the Supreme Court of Maryland recognized and applied this exception as a matter of constitutional law articulating it as follows:

> [A] subsequent indictment on a second offense, otherwise barred by the Double Jeopardy Clause of the Fifth Amendment, is not barred if, at the time of prosecution for the earlier offense a reasonable prosecutor, having full knowledge of the facts which were known and in the exercise of due diligence should have been known to the police and prosecutor at that time, would not be satisfied that he or she would be able to establish the suspect's guilt beyond a reasonable doubt.

Id. at 525.

The common law year-and-a-day rule provided that a murder prosecution is barred "when the victim dies more than a year and a day after being injured." *State v. Minster*, 302 Md. 240, 241 (1985). In Maryland, that rule was abrogated by statute in 1996. 1996 Md. Laws, ch. 360, codified at Md. Code (1957, 1996 Repl. Vol.), Art. 27, § 415. A substantially similar statute is now codified at Maryland Code (2002, 2021 Repl. Vol.), Criminal Law Article ("CL"), § 2-102, which states: "A prosecution may be instituted for murder, manslaughter, or unlawful homicide, whether at common law or under this title, regardless of the time that has elapsed between the act or omission that caused the death of the victim and the victim's death."

117075001, henceforth "001") with involuntary manslaughter and first-degree child abuse resulting in death. *Id.* at 5.

Appellant filed a "Motion to Enforce Plea Agreement and Bar Further Prosecution," contending that the binding plea agreement precluded any subsequent prosecution arising out of the same underlying acts that had led to the original charges in Case No. 022. *Id.* at 1. The circuit court denied that motion. Thereafter, the matter proceeded to a jury trial that resulted in a finding of guilt of the charges in Indictment 001. *Id.*

At the sentencing hearing that followed, the prosecutor addressed the court as follows:

> Judge, pursuant to the Court's request -- and of course we are here for sentencing -- the State did complete sentencing guidelines, **we do not take into account the prior offense given the Court's decision, without the State's objection, to vacate it today.** If I may approach with those.

(Emphasis added.)

After the prosecutor had completed argument, recommending a 25-year sentence, defense counsel declared:

> Thank you, Your Honor. We already covered the sentencing guideline issue. **And, Judge, the underlying judgment in the first case dated to 2008, which the conviction was in 2009, I think we all agree that that should be vacated.**

(Emphasis added.)

Defense counsel then argued for a more lenient sentence, and finally, the defendant (i.e., appellant) allocuted. The court then declared as follows:

> And so I -- first of all, **because of these convictions, I will be vacating the conviction in Case No. 108144022.** I will be sentencing -- with respect to the manslaughter conviction, I will be sentencing Ms. Martin

> to a six-year sentence. With respect to the child abuse sentence, I am sentencing Ms. Martin to a six-year concurrent sentence. And I would like to note that this sentence is way below the guidelines recommended by the State of Maryland.

(Emphasis added.)

Two months later, the circuit court entered an order, purporting to clarify its ruling at the sentencing hearing and stating as follows:

> **ORDER FOR VACATED SENTENCE**
>
> This matter having come before the Court on July 31, 2019, for a sentencing clarification, it is this 31st day of July, 2019, by the Circuit Court for Baltimore City, Part 34 and it is hereby:
>
> **ORDERED** that the sentence provided in Case No. 108144022 shall be VACATED; and it is further
>
> **ORDERED** that all counts under Case No. 108144022 shall be closed by operation of law.
>
> **ALL SUBJECT TO THE FURTHER JURISDICTION OF THE COURT.**

Meanwhile, an appeal was taken from the judgments in Case No. 001. We held that the second prosecution violated the terms of the binding plea agreement. *Martin I*, slip op. at 10-13. We therefore vacated the judgments in Case No. 001. *Id.* at 13.

The State thereafter filed a "Motion for Clarification and Stay of Mandate," pointing out that, "prior to imposing sentence on the 2019 charges, the circuit court purported to 'vacat[e]' the 2009 conviction" and that, because this Court "vacated the 2019 convictions and sentences," the net effect "leaves Martin with *no* conviction for her abusive act." After eliciting appellant's response, we summarily denied the State's motion.

The State then filed a motion in the circuit court to reinstate appellant's 2009 conviction. In that motion, the State acknowledged that the judge, during the 2019 sentencing hearing in Case No. 001, declared that "because of these convictions [in Case No. 001], I will be vacating the conviction in case number 108144022." The State urged that the "circumstances surrounding the vacating of the 2009 conviction strongly suggest" that the conviction was "not vacated as much as [it was] merged with the convictions for child abuse resulting in death and manslaughter" in Case No. 001. "Merger of the 2009 conviction and 2019 convictions," moreover, "was appropriate because the 2019 convictions for child abuse resulting in death and manslaughter were based on the same act on which the 2009 conviction for first degree child abuse was based." Because merger does not wipe out a conviction for the merged offense, the State maintained that appellant's 2009 conviction "remained *in esse* after its merger with the 2019 convictions," and therefore "survived the vacating of the 2019 convictions" by this Court.

Appellant filed an opposition, declaring that there was no language in our decision, in *Martin I*, "suggesting in any way that the vacated sentence in the 2008 case should be reinstated." Nor, according to appellant, was there "any verbiage that could be interpreted to mean this case was merged, not vacated, and therefore should be reinstated."

The circuit court held a hearing on the State's motion, where the prosecutor argued in part:

> This defendant was convicted under this case number pursuant to a plea of first degree child abuse. Her son, [D.] was still alive at that time, he did unfortunately pass away due to his injuries. Ms. Martin was tried for manslaughter -- or tried in front of Your Honor for that death, I believe she was convicted of manslaughter and when we sentenced this case, during the

sentencing, Your Honor had us vacate the -- or the conviction of child abuse vacated in light of the manslaughter conviction. This manslaughter conviction was eventually overturned by the [Appellate Court of Maryland]. Essentially they are holding that she relied on the plea in the 108 case, the case that we're currently in front of Your Honor for, and therefore cannot be convicted in the manslaughter case and so the State is currently before the Court on its motion to reinstate the conviction for child abuse as the manslaughter conviction has been vacated by the [Appellate Court of Maryland].

* * *

I can't speak to what's in the Court's mind, only looking at what was said on the record, specifically Your Honor stated that because of the manslaughter conviction, you would be vacating the conviction in the other case or in this case, this 108 case. It's the State's understanding it was done for purpose of merger. Given that they are based on the same incident and both could not stand and the child abuse in the first degree was a lesser-included of the manslaughter conviction.

So the State would ask that the conviction for the child abuse be reinstated. As noted when the defendant in this case appealed to the [Appellate Court of Maryland], her whole appeal was predicated on the fact that because she took the 2008 plea, you know, this manslaughter conviction should be overturned which it was and now she is, I suppose asking that she not have any conviction at all, even though she agreed to the plea in the 108 case which was specifically mentioned several times by the [Appellate Court of Maryland] in rendering their opinion.

The defense countered:

First and foremost, I wanted to point out that the conviction in the '08, the 2008 case was an [*Alford*] plea and it was very clear from the record which I've read that Ms. Martin took that plea because she had been in jail for 13 months. So that was an [*Alford*] plea, I know it obviously results in the guilty finding but she never admitted to do anything at that time.

Your Honor, I think what this all hinges on is whether this was a merger of sentence for conviction or whether it was a vacated and our obvious standpoint is that it was a vacated judgment I, you know, incorporated that into my motion, I actually attached the vacated order by Your Honor, at no point is merger ever[] discussed. In the original -- well, I think we tried this in 2017 or 2018, I requested that the 2008 case be vacated,

> Your Honor agreed, the State did not object, it was [a different prosecutor] at that time, I realize [the present prosecutor] was not there, but [the previous prosecutor] was present. So merger speaks of multiple crimes within one incident, not two separately two charged cases which is what we have here, with close to 10 year[s] apart in even charging, Your Honor.
>
> So the record is clear and uses the term vacate. Merger is never discussed or [alluded] to. The State did agree to vacating it, they did not suggest a merger at the time and they did not object. I think what the [Appellate Court of Maryland] was saying is this was a unique situation, that it was based on the motion to bar prosecution because they believed and as we argued, that it was foreseeable that what happened to [D.] would happen and that would have been factored into the underlying sentence.
>
> I think what the State is trying to say is maybe the intent of the Court was to merge the sentences but that's not what happened, it was vacated. So I also, not having any convictions is a collateral consequence of the verb, the words that were used in this. I don't think this is an intent on anybody's -- you have to have no convictions, I think the law is what it is. We've not agreed that this was merger at all, Your Honor, I think the proper avenue if the State was clearly and obviously against the [Appellate Court of Maryland] or objected to it or did not agree to their decision is they could have appealed through the [Supreme Court of Maryland] and they chose not to do that. And that would have rendered this hearing moot.
>
> The [Appellate Court of Maryland] in their opinion, which was very interesting, they never addressed reinstatement, in fact the State filed another motion prior to this, I'm not sure [which prosecutor], to clarify whether this was a merger or vacated and that was met with, not very -- it was not received well by the [Appellate Court of Maryland] because it was clearly never addressed, it was never brought up, it was never put forth.

The circuit court granted the State's motion, declaring that the "sole reason" that the conviction in Case No. 022 had been vacated was because of merger, specifically, that it merged into the manslaughter in Case No. 001. Six weeks later, the circuit court entered an order that appellant's conviction in Case No. 022 be "reinstated." This timely appeal from the circuit court's order followed.

DISCUSSION

Parties' Contentions

Appellant contends that the circuit court erred in granting the State's motion to reinstate her 2009 conviction. According to appellant, even though that court may have erred, in 2019, in vacating the 2009 *conviction* rather than the 2009 *sentence*, the 2019 order became final, and the State cannot now, at this late date, challenge it. Thus, according to appellant, the circuit court, in 2022, was without power to undo the effect of its 2019 ruling. In support, appellant cites *Pugh v. State*, 271 Md. 701 (1974), *Daff v. State*, 317 Md. 678 (1989), *State v. Sayre*, 314 Md. 559 (1989), and *Cathcart v. State*, 397 Md. 320 (2007). *Pugh* and *Daff* involved erroneous entries of acquittals after jeopardy had attached; *Sayre* and *Cathcart* involved errors in pronouncement of sentences which could not be corrected afterward. The common theme in all these cases, according to appellant, is that the intent of the judges was irrelevant, and once final judgments had been entered, the judges were powerless to correct their mistakes.

The State counters that the 2019 order vacated appellant's 2009 sentence, not her conviction. Therefore, according to the State, it was unnecessary to file a motion to "reinstate" appellant's 2009 conviction "because it remained in place by operation of law." To the extent there was a variation between the circuit court's oral pronouncement in 2019 and the written order that subsequently was entered, the court, according to the State, "had no authority to vacate [appellant's] 10-year-old conviction." Rather, the circuit court's authority was limited to merging the 2009 conviction into the 2019 convictions; thus, argues the State, when we vacated the judgments in the 2019 case, the 2009 conviction

remained in place. But even if, for the sake of argument, the circuit court, in 2019, had the power to, and did, vacate the 2009 conviction, the court's 2019 order expressly stated that the circuit court retained continuing jurisdiction, and its order, in 2022, reinstating appellant's 2009 conviction, was lawful and should be affirmed. In support, the State cites several decisions from our sister jurisdictions where courts have, under analogous circumstances, reinstated convictions. Finally, according to the State, the authorities appellant relies upon are distinguishable from this case.

Analysis

In resolving this appeal, we focus on the critical event: the May 2019 sentencing hearing, in Case No. 001, during which the court "vacated" appellant's 2009 conviction in Case No. 022. The question we must answer is whether the circuit court, in May 2019, had the power to vacate the conviction in Case No. 022. To answer this question, we consider the scope of a circuit court's revisory power over a judgment in a criminal case.

"Under the common law, Maryland courts possessed certain inherent powers over cases, including the authority to modify or vacate judgments, during the 'term of court' in which the case was heard." *Bereska v. State*, 194 Md. App. 664, 680-81 (2010). "[A]t least until 1951, courts had the power to set aside or change their judgments during the term of court." *Id.* at 681. "Since 1951, the power has been set forth in the Maryland Rules of Practice and Procedure." *Id.* In addition, certain statutes authorize a circuit court, under limited circumstances, to reopen a judgment in a criminal case.

Among the rules that authorize a circuit court to reopen a judgment in a criminal case are Rule 4-331, governing motions for new trial; Rule 4-345, governing sentencing;

and Rules 15-1201 through 15-1207, governing coram nobis proceedings.[2] The statutes authorizing the reopening of a judgment in a criminal case are Criminal Procedure Article ("CP"), §§ 7-101 through 7-109, the Maryland Uniform Postconviction Procedure Act; CP §§ 8-101 through 8-109, the Review of Criminal Sentences Act; CP § 8-201, which governs postconviction DNA petitions; CP § 8-301, which governs petitions for writ of actual innocence; CP § 8-301.1, which authorizes a State's motion to vacate probation before judgment or conviction; and CP § 8-302, which authorizes motions to vacate judgment if participation in the offense was a direct result of being a victim of human trafficking.[3]

The key point to recognize here is that none of these provisions were involved in this case, nor do any of them apply. Undoubtedly because this case involved a rare exception to double jeopardy, as well as a relatively recently enacted statute (abrogating

[2] There are, in addition, other rules that relate to a trial court's revisory power over a judgment, which implement statutes. For example, Rule 4-332 implements Maryland Code (2001, 2018 Repl. Vol.), Criminal Procedure Article ("CP"), § 8-301, governing petitions for writ of actual innocence; Rule 4-344 implements CP §§ 8-101 through 8-109, the Review of Criminal Sentences Act; Rules 4-401 through 4-408 implement CP §§ 7-101 through 7-109, the Maryland Uniform Postconviction Procedure Act; and Rules 4-701 through 4-711 implement CP § 8-201, the statute governing postconviction petitions for DNA testing.

[3] Within the past decade, there have also been several ameliorative statutes enacted which authorize review of sentences for special categories of defendants. As part of the Justice Reinvestment Act, 2016 Md. Laws, ch. 515, a statute (CL § 5-609.1) was enacted permitting belated review of mandatory minimum sentences imposed for certain violations of the Maryland Controlled Substances Act. Then, as part of the Juvenile Restoration Act, 2021 Md. Laws, ch. 61, a statute (CP § 8-110) was enacted permitting review of sentences imposed on certain offenders who, at the time of the offense, were juveniles who had been charged as adults.

the year-and-a-day rule), there is no statute or rule directly addressing the circuit court's revisory power over the judgment in Case No. 022, in 2019. The only possible source of that power rests in the so-called "fundamental jurisdiction" of the court.[4]

In *Johnson v. State*, 452 Md. 702 (2017), the Supreme Court of Maryland considered a related question: whether a circuit court retained fundamental jurisdiction over a case, after it previously had declared a mistrial on the ground of manifest necessity. In that case, the prosecution negligently introduced inadmissible evidence (unredacted recordings of Johnson's telephone conversations, which the trial court previously had ordered redacted), and the defense moved for a mistrial. *Id.* at 705-06. The trial court deferred ruling on that motion. *Id.* at 706-07. Later that day (a Friday), after the close of the State's case-in-chief, the defense moved for judgment of acquittal. *Id.* at 708. The court did not rule on the motion for judgment of acquittal at that time, and subsequently, trial was recessed for the day. *Id.* When the court reconvened the following Monday, the court granted the defense motion for a mistrial. *Id.* Defense counsel protested that retrial should be barred, alleging that the prosecutor had intentionally introduced the unredacted recordings. *Id.* at 709.

[4] In *State v. Thomas*, No. 15, Sept. Term, 2023, *cert. granted*, Sept. 22, 2023, the Supreme Court of Maryland may address whether a court retains "fundamental jurisdiction" to rule on a timely filed motion for reconsideration of sentence, under Maryland Rule 4-345(e), after the expiration of the five-year time limit in that rule. *See Schlick v. State*, 238 Md. App. 681, 690 (2018) (holding that a circuit court's "fundamental jurisdiction" persists beyond the five-year period), *aff'd on other grounds*, 465 Md. 566 (2019). But regardless of the Supreme Court's decision in that case, a court's power to revise a sentence does not imply the power to vacate a judgment in its entirety, as the circuit court purported to do here.

"There was no reference by anyone to Johnson's motion for judgment of acquittal made the previous Friday." *Id.* The court then discharged the jury. *Id.* at 709-10.

Several weeks later, Johnson filed a motion to dismiss on the ground of double jeopardy. *Id.* at 710. Thereafter, the circuit court "held a hearing on Johnson's motion to dismiss the case on double jeopardy grounds and referred to Johnson's suggestion that the State's evidence in the case was insufficient[.]" *Id.* Upon the conclusion of the hearing, the circuit court entered an order, purporting to strike the grant of a mistrial and granting Johnson's motion for judgment of acquittal. *Id.* at 711.

The State filed a new indictment, charging Johnson with murder in the second degree. *Id.* at 712. Johnson filed a motion to dismiss, which the circuit court granted. *Id.* The State appealed, and, in a reported opinion, we reversed, holding that once the mistrial had been declared and the jury discharged, the circuit court could not "exercise fundamental jurisdiction over subject matter that no longer exists." *State v. Johnson*, 228 Md. App. 489, 509 (2016). We reasoned, in the absence of "a specific statute or rule authorizing a trial court to exercise revisory power over the grant of a mistrial, such power, if it exists at all, exists only until the jury is discharged." *Id.* at 511 (footnote omitted). We concluded that, "when the trial court declared a mistrial and discharged the jury[,]" Johnson's trial "became in the eyes of the law 'no trial at all,' and the trial court thereafter had no revisory power to revive the [trial] and no fundamental jurisdiction to grant a judgment of acquittal in that proceeding." *Id.* at 513 (quoting *Harrod v. State*, 423 Md. 24, 35 (2011)). We therefore held that the trial court's purported grant of the motion for judgment of acquittal, in the absence of fundamental jurisdiction, was "'a nullity, for an

act without such jurisdiction is not to act at all[,]'" *id.* (quoting *Pulley v. State*, 287 Md. 406, 416 (1980)), and accordingly, Johnson's retrial was not barred by double jeopardy. *Id.* Johnson sought further review in the Supreme Court. *Johnson v. State*, 449 Md. 410 (2016).

The Supreme Court of Maryland affirmed. Our high Court concluded that "when the trial judge acted outside of the strictures of Rule 4-324 [in granting the motion for judgment of acquittal] in the instant case, he acted without authority." *Johnson*, 452 Md. at 722. The Court distinguished the case before it from cases such as *State v. Taylor*, 371 Md. 617 (2002), and *Daff*, *supra*, 317 Md. 678, which it characterized as "cases in which acquittals were entered [erroneously] during the pendency of judicial proceedings," *Johnson*, 452 Md. at 726, emphasizing that "only when the court has the authority to act does an acquittal implicate double jeopardy." *Id.* Thus, concluded the Court, the trial court's grant of the motion for judgment of acquittal was of no effect because it was done "in the circumstance in which the judge was totally without authority to act." *Id.* at 735.

Largely for the same reason, we hold that the judge in the instant case did not have the authority, in May 2019, to vacate appellant's 2009 conviction during her sentencing hearing in Case No. 001. Therefore, his action, purporting to do so, was a nullity, and that conviction remains in effect. Consequently, the circuit court's grant of the State's Motion to Reinstate Conviction was itself of no consequence because, in the State's words, the conviction in Case No. 022 "remained in place by operation of law."

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS ASSESSED TO APPELLANT.

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Respectfully, I concur in the result only.

Three years ago, a panel of this Court held that the circuit court had erred in reopening Martin's 2009 conviction. *Martin v. State*, No. 658, Sept. Term, 2019 (filed Sept. 10, 2020) ("*Martin I*"). We held that Martin's plea deal could reasonably have been understood to include the possibility that the victim would die, and therefore the State was prohibited from prosecuting Martin for further crimes related to the victim's injuries. *Martin I*, slip op. at 6.

When an appellate court finds reversible error, the case resets to the stage at which the error occurred. *Zadeh v. State*, 258 Md. App. 547, 583 (2023); *Hammersla v. State*, 184 Md. App. 295, 311 (2009). While proceedings before the error are unaffected, anything that occurred after the error is wiped clean. Thus, when this Court found that the denial of Martin's motion to enforce her plea agreement was reversible error, Martin's case was reset to the point at which she filed it and all proceedings after that point were, in effect, undone. It should have been as if the prosecution, conviction, and sentencing that followed never occurred. This includes any rulings the circuit court ostensibly made to "vacate" or "merge" Martin's 2009 conviction as a consequence of her 2019 conviction. Thus, what the circuit court intended to do, whether it had jurisdiction to do it, and whether it later had jurisdiction to undo it are purely academic questions about a ruling that no longer exists.

To be clear, I express no opinion as to the majority's analysis. It is my view that the sentencing hearing about which the parties disagree was vacated by this Court's mandate in *Martin I*, and as a result, there is nothing for this Court to decide now beyond enforcing our previous mandate.