

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0151

September Term, 2012

SHAWN BENBOW

v.

STATE OF MARYLAND

Krauser, C.J.,
Meredith,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: October 21, 2015

*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.

Shawn Benbow was convicted, in the Circuit Court for Baltimore City, of attempted first degree murder and related offenses. After those convictions were affirmed by this Court, in *Benbow v. State*, No. 440, Sept. Term, 2006 slip op. (filed April 3, 2008), appellant filed a motion to correct an illegal sentence. The Baltimore City circuit court granted that motion, in part, by striking the period of probation imposed by the sentencing court.¹ Appellant then noted this appeal presenting a single question for our review, which is: Did the circuit court err in not fully granting the motion to correct an illegal sentence? Finding no error, we affirm.

BACKGROUND

Appellant was convicted of attempted first degree murder, use of a handgun in the commission of a crime of violence, reckless endangerment, and wearing, carrying, or transporting a handgun after having been convicted of a disqualifying crime. He was thereafter sentenced to a term of life imprisonment with all but 30 years of that sentence suspended for the attempted first degree murder count; a term of 20 years' imprisonment for the use of a handgun in the commission of a crime of violence, to be served consecutive to the sentence imposed for attempted first degree murder; and a concurrent term of 5 years' imprisonment, without parole, for possession of a firearm after a disqualifying offense. The circuit court stated that all of these sentences were “to run concurrently with any sentence that the Defendant [was] presently serving.”

¹ The court struck the period of probation because the sentencing court did not impose a period of probation on appellant's partially suspended life sentence. The effect of striking the period of probation was to create a definite 30 year sentence.

DISCUSSION

Appellant contends that the court’s statement, “to run concurrently with any sentence that the Defendant is presently serving,” created an ambiguity that rendered his sentence illegal. Specifically, appellant claims that, by stating that all of the sentences imposed in this case were to run concurrently with any existing sentence, it was unclear whether the sentencing court intended that his sentences were to run concurrently with each other.

For a sentence to be considered illegal, any illegality must inhere in the sentence itself. That is to say, an illegal sentence is imposed only where no sentence should have been imposed, or where the sentence exceeds the limits prescribed by either statute or rule. *Matthews v. State*, 424 Md. 503, 512-14 (2012). Notwithstanding this well-settled principle, appellant does not contend that his sentences were in excess of that permitted by law, nor does he maintain that he was not convicted of any offense for which he was sentenced. The only “illegality,” appellant asserts, is that his sentences are ambiguous because of the way in which the sentencing court related the sentences to each other.

The sentences imposed on appellant are, however, comparable to those imposed in *Palmer v. State*, 193 Md. App. 522 (2010). There, we held that, where each sentence can be temporally related to at least one other sentence, there is no ambiguity.

For his unmerged convictions, Palmer received the following sentences: Count 1 - 30 years; Count 3 – 10 years consecutive to Count 1; Count 6 – 3 years concurrent to Count 3; Count 7 – 30 years concurrent to Count 6; Count 8 – 10 years consecutive to Count 7; Count 10 – 3 years concurrent to Count 8. In his motion to correct an illegal

sentence, Palmer contended that his sentences were ambiguous because the sentence for Count 7 was not expressly made consecutive to that imposed for Count 1. Accordingly, he argued that the sentence in Count 7 was concurrent to that imposed in Count 1 under the rule of lenity. *Id.* at 528-29.

In rejecting that contention, we held in *Palmer* that, where each sentence could be related to at least one other sentence, there was no ambiguity in the sentences. *Id.* at 531 (distinguishing *Robinson v. Lee, supra*). Thus, in *Palmer*, the fact that the sentence in Count 7 could be temporally related to at least one other sentence, that is, Count 6, the temporal relationship between Count 7 and Count 1 could be determined by following the relationship of the intermediate sentences.

Like *Palmer*, each of the sentences imposed in this case can be temporally related to at least one other sentence. And, because we can accurately relate each of appellant's sentences in this case to at least one other sentence, there is no ambiguity. Accordingly, we affirm the decision of the circuit court.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**