

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2318

September Term, 2015

CHARLIE MATTHEWS

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Nazarian,

JJ.

PER CURIAM

Filed: December 13, 2016

*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 2005, a jury convicted appellant, Charlie Matthews, of first-degree felony murder, use of a handgun in the commission of a crime of violence or felony, and conspiracy to commit robbery with a dangerous weapon. He was sentenced to life imprisonment for murder, to a term of twenty years' imprisonment for the handgun offense, and to a term of twenty years' imprisonment for the conspiracy offense. All three sentences were to run consecutive to each other. Upon direct appeal, this Court affirmed. *Matthews v. State*, No. 447, September Term, 2006 (filed October 26, 2007).

In 2015, Matthews filed a motion to correct an illegal sentence in which he asserted that his convictions should have been merged for sentencing purposes. The circuit court denied that motion. In this appeal, Matthews maintains that his first-degree murder conviction was the “lesser included offense” and should have merged, for sentencing purposes, into his conviction for use of a handgun in the commission of a crime of violence or felony. He asserts that separate sentences for these offenses violated the Double Jeopardy Clause. Accordingly, he requests that this Court vacate his life sentence for murder.

Matthews is not entitled to the relief he seeks because his sentences are lawful. Section 4-204 of the Criminal Law Article (formerly Article 27, §36B(d)) of the Maryland Code provides that the penalty for the use of a handgun in the commission of a crime of violence or felony shall be “in addition to any other penalty imposed for the crime of violence or felony.” In *Whack v. State*, 288 Md. 137, 149-150 (1980), the Court of Appeals held that the legislature, in enacting this provision, clearly intended that separate and distinct sentences be imposed for the use of a handgun in the commission of a felony and

the underlying felony, even where the two offenses were part of the same incident. Accordingly, there was no violation of the Double Jeopardy Clause.

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